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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार, 19 मार्च, 2011 / 28 फाल्गुन, 1932

हिमाचल प्रदेश सरकार

विधि विभाग

अधिसूचना

शिमला–2, 18 मार्च, 2011

संख्याः एल0एल0आर0–डी0(6)–4 / 2011–लेज.––हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 200 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 15–3–2011 को अनुमोदित हिमाचल प्रदेश विनियोग विधेयक, 2011 (2011 का विधेयक संख्यांक 4) को वर्ष 2011 के अधिनियम संख्यांक 23 के रूप

में संविधान के अनुच्छेद 348 (3) के अधीन उसके अंग्रेजी प्राधिकृत पाठ सहित हिमाचल प्रदेश राजपत्र (असाधारण) में प्रकाशित करती हैं।

आदेश द्वारा,
अवतार चन्द डोगरा,
प्रधान सचिव (विधि),
हिमाचल प्रदेश सरकार।

———————

हिमाचल प्रदेश विनियोग अधिनियम, 2011

धाराओं का क्रम

धाराएं :

1. संक्षिप्त नाम ।

2. हिमाचल प्रदेश राज्य की संचित निधि में से वित्तीय वर्ष 2010 - 2011 के लिए रुपये 9,64,12,89,462 की और राशि जारी करना ।

3. विनियोग ।

अनुसूची ।

———————

2011 का अधिनियम संख्यांक 23

हिमाचल प्रदेश विनियोग अधिनियम, 2011

(राज्यपाल महोदया द्वारा तारीख 15 मार्च, 2011 को यथाअनुमोदित)

31 मार्च, 2011 को समाप्त होने वाले वित्तीय वर्ष के लिए हिमाचल प्रदेश राज्य की संचित निधि में से सेवाओं के लिए कतिपय अतिरिक्त धनराशियों के संदाय को प्राधिकृत करने और उनका विनियोग करने के लिए **अधिनियम ।**

भारत गणराज्य के बासठवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :-

1. **संक्षिप्त नाम.** – इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश विनियोग अधिनियम, 2011 है ।

2. **हिमाचल प्रदेश राज्य की संचित निधि में से वित्तीय वर्ष 2010 – 2011 के लिए ₹ 9,64,12,89,462 की और राशि जारी करना.** – हिमाचल प्रदेश राज्य की संचित निधि में से अनुसूची के तृतीय स्तम्भ में विनिर्दिष्ट से अनधिक धनराशियों जिनका योग ₹ 9,64,12,89,462 (₹ नौ सौ चौंसठ करोड़, बारह लाख नवासी हजार और चार सौ बासठ) है, संदत्त और उपयोजित की जाए, जिनका वित्तीय वर्ष 2010 - 2011 की अवधि में अनुसूची के द्वितीय स्तम्भ में विनिर्दिष्ट सेवाओं और प्रयोजनों से सम्बन्धित प्रभारों को चुकाने के लिए उपयोग किया जाएगा ।

3. **विनियोग.** – इस अधिनियम द्वारा हिमाचल प्रदेश राज्य की संचित निधि में से संदत्त और उपयोजित किए जाने के लिए प्राधिकृत धनराशियों का इस अधिनियम की धारा 2 के अधीन विनिर्दिष्ट अवधि से सम्बन्धित अनुसूची में अभिव्यक्त सेवाओं और प्रयोजनों के लिए और विनियोजन किया जाएगा।

अनुसूची

(धारा 2 और 3 देखें)

मांग संख्या	सेवाएं और प्रयोजन		निम्नलिखित राशियों से अनधिक		
			विधान सभा द्वारा दत्तमत ₹	संचित निधि पर प्रभारित ₹	जोड़ ₹
1	2		3	4	5
1	विधान सभा	(राजस्व)	22,92,000	1,28,000	24,20,000
		(पूंजी)	1,29,89,000	—	1,29,89,000
2	राज्यपाल और मंत्रिपरिषद्	(राजस्व)	44,03,000	22,12,000	66,15,000
3	न्याय प्रशासन	(राजस्व)	29,14,40,062	7,67,25,000	36,81,65,062
		(पूंजी)	5,47,00,000	—	5,47,00,000
4	सामान्य प्रशासन	(राजस्व)	2,15,03,116	64,25,000	2,79,28,116
5	भू-राजस्व और जिला प्रशासन	(राजस्व)	33,91,54,919	—	33,91,54,919
6	आबकारी और कराधान	(राजस्व)	4,80,52,000	—	4,80,52,000
7	पुलिस और सम्बद्ध संगठन	(राजस्व)	59,29,48,295	—	59,29,48,295
		(पूंजी)	2,20,93,000	—	2,20,93,000
8	शिक्षा	(राजस्व)	2,66,81,72,000	7,48,000	2,66,89,20,000
		(पूंजी)	3,000	—	3,000
9	स्वास्थ्य और परिवार कल्याण	(राजस्व)	66,99,15,000	—	66,99,15,000
		(पूंजी)	12,89,00,000	—	12,89,00,000
10	लोक निर्माण-सड़क, पुल तथा भवन	(पूंजी)	7,26,60,000	3,32,10,000	10,58,70,000
11	कृषि	(राजस्व)	61,62,38,000	—	61,62,38,000
		(पूंजी)	4,000	—	4,000
12	उद्यान	(राजस्व)	29,20,96,000	—	29,20,96,000
		(पूंजी)	8,65,28,277	—	8,65,28,277
13	सिंचाई, जलापूर्ति एवं सफाई	(राजस्व)	50,34,00,000	—	50,34,00,000
		(पूंजी)	62,63,13,075	1,72,88,925	64,36,02,000

14	पशुपालन, दुग्ध विकास एवं मत्स्य	(राजस्व)	28,50,18,200	—	28,50,18,200
		(पूंजी)	2,37,62,000	—	2,37,62,000
16	वन और वन्य जीवन	(राजस्व)	4,000	7,90,000	7,94,000
		(पूंजी)	11,99,000	—	11,99,000
17	निर्वाचन	(राजस्व)	10,34,03,500	—	10,34,03,500
18	उद्योग, खनिज, आपूर्ति एवं सूचना प्रौद्योगिकी	(राजस्व)	1,000	—	1,000
19	सामाजिक न्याय एवं अधिकारिता	(राजस्व)	33,36,59,000	—	33,36,59,000
20	ग्रामीण विकास	(राजस्व)	37,77,47,109	60,000	37,78,07,109
21	सहकारिता	(राजस्व)	6,76,57,000	—	6,76,57,000
		(पूंजी)	22,07,47,000	—	22,07,47,000
22	खाद्य एवं नागरिक आपूर्ति	(राजस्व)	1,000	—	1,000
23	विद्युत विकास	(राजस्व)	7,16,00,000	—	7,16,00,000
24	मुद्रण और लेखन सामग्री	(राजस्व)	5,18,13,000	—	5,18,13,000
25	सड़क और जल परिवहन	(राजस्व)	3,000	—	3,000
26	पर्यटन और नागर विमानन	(राजस्व)	20,16,000	—	20,16,000
		(पूंजी)	2,99,46,000	—	2,99,46,000
27	श्रम, रोजगार और प्रशिक्षण	(राजस्व)	65,27,000	—	65,27,000
		(पूंजी)	8,20,50,000	—	8,20,50,000
28	शहरी विकास, नगर एवं ग्राम योजना तथा आवास	(राजस्व)	20,000	—	20,000
		(पूंजी)	—	1,59,41,984	1,59,41,984
29	वित्त	(राजस्व)	50,46,04,000	6,000	50,46,10,000
		(पूंजी)	—	1,000	1,000
30	विविध सामान्य सेवायें	(राजस्व)	7,69,97,000	—	7,69,97,000
31	जनजातीय विकास	(राजस्व)	15,91,61,000	—	15,91,61,000
		(पूंजी)	90,23,000	—	90,23,000
32	अनुसूचित जाति उप योजना	(राजस्व)	1,000	—	1,000
		(पूंजी)	2,69,89,000	—	2,69,89,000
	जोड़	(राजस्व)	**8,08,98,47,201**	**8,70,94,000**	**8,17,69,41,201**
		(पूंजी)	**1,39,79,06,352**	**6,64,41,909**	**1,46,43,48,261**
		कुल जोड़	**9,48,77,53,553**	**15,35,35,909**	**9,64,12,89,462**

AUTHORITATIVE ENGLISH TEXT

THE HIMACHAL PRADESH APPROPRIATION ACT, 2011

ARRANGEMENT OF SECTIONS

Sections :

1. Short title.

2. Issue of a further sum of Rs. 9,64,12,89,462 out of the Consolidated Fund of the State of Himachal Pradesh for the financial year 2010-2011.

3. Appropriation.

THE SCHEDULE.

Act No. 23 of 2011

THE HIMACHAL PRADESH APPROPRIATION ACT, 2011

(AS ASSENTED TO BY THE GOVERNOR ON 15TH MARCH, 2011)

AN

ACT

to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Himachal Pradesh for the services for the financial year ending on the 31st day of March, 2011.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixty-second Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Himachal Pradesh Appropriation Act, 2011.

2. Issue of a further sum of ₹ 9,64,12,89,462 out of the Consolidated Fund of the State of Himachal Pradesh for the financial year 2010-2011.—From and out of the Consolidated Fund of the State of Himachal Pradesh, there may be paid and applied sums not exceeding those specified in column (3) of the Schedule amounting in the aggregate to the sum of ₹ 9,64,12,89,462 (₹ Nine hundred sixty four crores, tweleve lakhs eighty nine thousand four hundred and sixty two) towards defraying the several charges which will come in course of payment during the financial year 2010-2011 in respect of the services and purposes specified in column (2) of the Schedule.

3. Appropriation.—The sums authorised to be paid and applied from and out of the Consolidated Fund of the State of Himachal Pradesh by this Act shall be further appropriated for the services and purposes expressed in the Schedule in relation to the period specified under section 2 of this Act.

THE SCHEDULE

(*See* sections 2 and 3)

1	2		3		
Demand No.	Services and purposes		Sums not exceeding		
			Voted by the Legislative Assembly	Charged on the Consolidated Fund	Total
			₹	₹	₹
1	2		3	4	5
1	Vidhan Sabha	(Revenue)	22,92,000	1,28,000	24,20,000
		(Capital)	1,29,89,000	—	1,29,89,000
2	Governor and Council of Ministers	(Revenue)	44,03000	22,12,000	66,15,000
3	Administration of Justice	(Revenue)	29,14,40,062	7,67,25,000	36,81,65,062
		(Capital)	5,47,00,000	—	5,47,00,000
4	General Administration	(Revenue)	2,15,03,116	64,25,000	2,79,28,116
5	Land Revenue and District Administration	(Revenue)	33,91,54,919	—	33,91,54,919
6	Excise and Taxation	(Revenue)	4,80,52,000	—	4,80,52,000
7	Police and Allied Organisations	(Revenue)	59,29,48,295	—	59,29,48,295
		(Capital)	2,20,93,000	—	2,20,93,000
8	Education	(Revenue)	2,66,81,72,000	7,48,000	2,66,89,20,000
		(Capital)	3,000	—	3,000
9	Health and Family Welfare	(Revenue)	66,99,15,000	—	66,99,15,000
		(Capital)	12,89,00,000	—	12,89,00,000
10	Public Works—Roads, Bridges and Buildings	(Capital)	7,26,60,000	3,32,10,000	10,58,70,000
11	Agriculture	(Revenue)	61,62,38,000	—	61,62,38,000
		(Capital)	4,000	—	4,000
12	Horticulture	(Revenue)	29,20,96,000	—	29,20,96,000
		(Capital)	8,65,28,277	—	8,65,28,277
13	Irrigation, Water Supply and Sanitation	(Revenue)	50,34,00,000	—	50,34,00,000
		(Capital)	62,63,13,075	1,72,88,925	64,36,02,000
14	Animal Husbandry, Dairy Development and Fisheries	(Revenue)	28,50,18,200	—	28,50,18,200
		(Capital)	2,37,62,000	—	2,37,62,000
16	Forest and Wild Life	(Revenue)	4,000	7,90,000	7,94,000
		(Capital)	11,99,000	—	11,99,000
17	Election	(Revenue)	10,34,03,500	—	10,34,03,500
18	Industries, Minerals, Supplies & Information Technology	(Revenue)	1,000	—	1,000

19	Social Justice and Empowerment	(Revenue)	33,36,59,000	—	33,36,59,000
20	Rural Development	(Revenue)	37,77,47,109	60,000	37,78,07,109
21	Co-operation	(Revenue)	6,76,57,000	—	6,76,57,000
		(Capital)	22,07,47,000	—	22,07,47,000
22	Food and Civil Supplies	(Revenue)	1,000	—	1,000
23	Power Development	(Revenue)	7,16,00,000	—	7,16,00,000
24	Printing and Stationery	(Revenue)	5,18,13,000	—	5,18,13,000
25	Road and Water Transport	(Revenue)	3,000	—	3,000
26	Tourism and Civil Aviation	(Revenue)	20,16,000	—	20,16,000
		(Capital)	2,99,46,000	—	2,99,46,000
27	Labour, Employment and Training	(Revenue)	65,27,000	—	65,27,000
		(Capital)	8,20,50,000	—	8,20,50,000
28	Urban Development, Town and Country Planning and Housing	(Revenue)	20,000	—	20,000
		(Capital)	—	1,59,41,984	1,59,41,984
29	Finance	(Revenue)	50,46,04,000	6,000	50,46,10,000
		(Capital)	—	1,000	1,000
30	Miscellaneous General Services	(Revenue)	7,69,97,000	—	7,69,97,000
31	Tribal Development	(Revenue)	15,91,61,000	—	15,91,61,000
		(Capital)	90,23,000	—	90,23,000
32	Scheduled Castes Sub-Plan	(Revenue)	1,000	—	1,000
		(Capital)	2,69,89,000	—	2,69,89,000
	Total	**(Revenue)**	**8,08,98,47,201**	**8,70,94,000**	**8,17,69,41,201**
		(Capital)	**1,39,79,06,352**	**6,64,41,909**	**1,46,43,48,261**
		Grand Total	**9,48,77,53,553**	**15,35,35,909**	**9,64,12,89,462**

[*Authoritative English Text of this Department Notification No. Per*(*A-IV*)-*A*(3)-3/84-II *dated* 18-03-2011 *as required under Clause* (3) *of Article 348 of the Constitution of India*]

PERSONNEL DEPARTMENT

Appointment-IV

NOTIFICATION

Shimla-171002, *the* 18*th March,* 2011

No.Per(A-IV)-A(3)-3/84-II.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the following rules further to amend the Himachal Pradesh Administrative Service Rules, 1973, notified vide this Department's Notification No. 7-5/73-Dp-Apptt. Dated 15.03.1973 and published in Rajpatra (Extra Ordinary) dated 11-05-1973, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh Administrative Service (First Amendment), Rules, 2011.

(2) These rules shall come into force from the date of publication in the Rajptra, Himachal Pradesh.

2. Amendment in Appendix-V, under Rule-10 (3).—For the existing provisions in Appendix-V of Himachal Pradesh Administrative Service Rules, 1973, (here-in-after referred to as the "said Rules"), the following shall be substituted, namely:—

"(A) Paper-I General Studies (Code No.-01).—This paper shall be of 200 marks and there shall be 100 objective type (multiple choice) questions from the following syllabus:-

- History, geography, political, art & culture and socio economic development of Himachal Pradesh.
- Current events of national and international importance.
- History of India and Indian national movement.
- Indian and World Geography –physical, social, economic geography of India and the world.
- Indian polity and governance–Constitution, political system, Panchayati Raj, public Policy, Rights issues, etc.
- Economic and social development–sustainable development, poverty, inclusion, demographics, social sector initiatives, etc.
- General issues on environmental ecology, bio-diversity and climate Change – that do not require subject specialization
- General science;

(B) (Paper-II) Aptitude Test (Code No.-02).—This paper shall be of 200 marks and in this paper there shall be 100 objective type (multiple choice) questions from the following syllabus:—

- Comprehension
- Interpersonal skills including communication skills
- Logical reasoning and analytical ability
- Decision making and problem solving
- General mental ability
- Basic numeracy (numbers and their relations, orders of magnitude etc. (Class X level), Data interpretation (charts, graphs, tables, data sufficiency etc.–Class X level)
- English Language comprehension skills (Class X level);

(C) This preliminary examination will consist of two objective type papers (multiple choice questions) and carry a maximum of 400 marks. Marks obtained in preliminary examination by the candidates who are declared qualified by the Commission for admission to the main examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be about 20 times the total approximate number of vacancies to be filled in the year in the Posts / Service. Only those candidates who have been declared to have qualified the preliminary examination by the H.P. Public Service Commission in a year will be eligible for admission to the main examination of that year provided they are otherwise eligible for admission to the Main Examination.

Note:—There will be penalty (Negative Marking) for wrong answers marked by a candidate in the objective type question papers.

(i) There are four alternatives for the answers to every question. For each question for which a wrong answer has been given by the candidate, one third of the marks assigned to that question will be deducted as penalty.

(ii) If a candidate gives more than one answer, it will be treated as a wrong answer even if one of the given answers happen to be correct and there will be same penalty as above for that question.

(iii) If a question is left blank i.e. no answer is given by the candidate, there will be no penalty for that question; and

(D) The duration of Papers No.I and II (General Studies and Aptitude Test) will be two hours each."

By order,
MS. RAJWANT SANDHU
Chief Secretary,
to the Government of Himachal Pradesh.

कृषि विभाग

अधिसूचना

शिमला–2, 4 मार्च, 2011

संख्या एग्र0ए0(3) 3 / 05.–हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, इस विभाग की अधिसूचना संख्या एग्र ए0(3)–3 / 2005, तारीख 2 जनवरी, 2010 द्वारा अधिसूचित हिमाचल प्रदेश कृषि विभाग, कनिष्ठ अभियन्ता, वर्ग–III {अराजपत्रित} भर्ती और प्रोन्नति नियम, 2010 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :

1. **संक्षिप्त नाम और प्रारम्भ.–**(I) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश कृषि विभाग, कनिष्ठ अभियन्ता, वर्ग–III {अराजपत्रित} भर्ती और प्रोन्नति नियम, 2010 है।

(II) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. **उपाबन्ध–'क' का संशोधन.–**हिमाचल प्रदेश कृषि विभाग, कनिष्ठ अभियन्ता, वर्ग–III {अराजपत्रित} भर्ती और प्रोन्नति नियम, 2010 के उपाबन्ध–क में :–

(क) स्तम्भ संख्या 4 के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :–

''10300–34800 रूपए जमा 3800 रूपए ग्रेड पे"।

(ख) स्तम्भ संख्या 15–क के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:–

इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियां नीचे दिए गए निबन्धनों और शर्तों के अध्यधीन की जाएंगी:–

(I) संकल्पना.—(क) इस पॉलिसी के अधीन हिमाचल प्रदेश, कृषि विभाग में कनिष्ठ अभियन्ता को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जाएगाः

परन्तु वर्षानुवर्ष आधार संविदा अवधि के विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष एक प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण वर्ष के दौरान संतोषजनक पाया गया है और केवल तभी उसकी संविदा की अवधि को नवीकृत/विस्तारित की जाएगी।

(ख) **पद का हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड के कार्यक्षेत्र में आना.**—निदेशक, कृषि, हिमाचल प्रदेश रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात्, अध्यपेक्षा को सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर के समक्ष रखेगा।

(ग) चयन, इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा।

(II) संविदात्मक उपलब्धियां.—संविदा के आधार पर नियुक्त कनिष्ठ अभियन्ता को 14100/—रूपए की समेकित नियत संविदात्मक रकम (जो पे बैंड के प्रारम्भिक जमा ग्रेड पे के बरावर होगी) प्रतिमास संदत्त की जाएगी। यदि संविदा में एक वर्ष से अधिक की बढ़ौतरी की जाती है, तो पश्चात्वर्ती वर्ष {वर्षों} के लिए संविदात्मक उपलब्धियों में 430/—रूपए की रकम {पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत} वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी।

(III) नियुक्ति/अनुशासन प्राधिकारी.—निदेशक, कृषि, हिमाचल प्रदेश नियुक्ति और अनुशासन प्राधिकारी होगा।

(IV) चयन प्रक्रिया.—संविदा नियुक्ति की दशा में, पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा अवधारित किया जाएगा।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति.—जैसी सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा समय—समय पर गठित की जाए।

(VI) करार.—अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध—ख के अनुसार करार हस्ताक्षरित करना होगा।

(VII) निबन्धन और शर्तें.—{क} संविदा के आधार पर नियुक्त व्यक्ति को 14100/— रूपए की नियत संविदात्मक रकम {जो पे बैंड के प्रारम्भिक जमा ग्रेड पे के बराबर होगी} प्रतिमास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष {वर्षों} के लिए संविदात्मक रकम में 430/— रूपए (पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा।

{ख} संविदा पर नियुक्त व्यक्ति की सेवा, पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी।

{ग} संविदा पर नियुक्त व्यक्ति, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

{घ} नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनाधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान {समापन} हो जाएगा। संविदा पर नियुक्त व्यक्ति, कर्त्तव्य {ड्यूटी} से अनुपस्थिति की अवधि के लिए किसी संविदात्मक रकम का हकदार नहीं होगा।

{ङ} संविदा पर नियुक्त कर्मचारी जिसने तैनाती के एक स्थान पर पाचं वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां कहीं भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

{च} चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण–पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक की गर्भवती महिला, प्रसव होने तक अस्थाई तौर पर अनुपयुक्त बनी रहेगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

{छ} संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

{ज} नियमित कर्मचारी की दशा में यथा लागू सेवा नियमों के उपबन्ध जैसे एफ.आर. एस.आर., छुट्टी नियम, साधारण भविष्य निधि नियम, पैंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे ।

आदेश द्वारा,
हस्ताक्षरित/–
सचिव {कृषि}।

———————

उपाबन्ध– ख

कनिष्ठ अभियन्ता और हिमाचल प्रदेश सरकार के मध्य निदेशक, कृषि हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप

यह करार श्री/श्रीमति..... पुत्र/पुत्री श्री निवासी, संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् 'प्रथम पक्षकार' कहा गया है), और हिमाचल प्रदेश की राज्यपाल के मध्य निदेशक, कृषि, (जिसे इसमें इसके पश्चात 'द्वितीय पक्षकार' कहा गया है) के माध्यम से आज तारीख को किया गया।

'द्वितीय पक्षकार' ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने कनिष्ठ अभियन्ता के रूप में संविदा के आधार पर निम्नलिखित निबन्धन औरैर शर्तों पर सेवा करने के लिए सहमति दी हैः–

1. यह कि प्रथम पक्षकार कनिष्ठ अभियन्ता के रूप में से प्रारम्भ होने और को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस् को अर्थात दिन को स्वयंमेव ही पर्यवसित {समाप्त} समझी जाएगी और सूचना नोटिस आवश्यक नहीं होगा। परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण करने के लिए, विभागाध्यक्ष एक प्रम्रमाण–पत्र जारी करेगा कि वर्ष के दौरान संविदा पर नियुक्त व्यक्ति की सेवा और आचरण संतोषजनक पाया गया और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी।

2. प्रथम पक्षकार की संविदात्मक रकम 14100 / –रूपये प्रतिमास होगी।

3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य / आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरूद्ध नियुक्त / तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को लगाया गया है, तो नियुक्ति पर्यवसित {समाप्त} की जाने के लिए दायी होगी।

4. संविदा पर नियुक्त कनिष्ठ अभियन्ता एक मास की सेवा पूरी करने के पश्चात एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त कनिष्ठ अभियन्ता को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा / होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

5. नियन्त्रक अधिकरी के अनुमोदन के बिना कर्त्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान {समापन} हो जाएगा। संविदा पर नियुक्त कनिष्ठ अभियन्ता कर्त्तव्य {डयूटी} से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

6. संविदा पर नियुक्त व्यक्ति, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानांतरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

7. चयनित अभ्यर्थी को सरकारी / रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण–पत्र प्रस्तुत करना होगा। महिला अभ्यर्थीयों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक, उसे अस्थाई तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी / व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।

8. संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को वेतन के न्यूनतम पर लागू है, यात्रा भत्ते / दैनिक भत्ते का हकदार होगा / होगी।

9. संविदा पर नियुक्त व्यक्ति{यों} को कर्मचारी सामूहिक बीमा योजना के साथ–साथ इ0पी0एफ0 / सी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने–अपने हस्ताक्षर कर दिए हैं।

साक्षियों की उपस्थिति में

1.

.....

.....

{नाम व पूरा पता}

2.

.....

.....

{नाम व पूरा पता}

{प्रथम पक्षकार के हस्ताक्षर}

साक्षियों की उपस्थिति में

1.

.....

.....

{नाम व पूरा पता}

2.

.....

.....

{नाम व पूरा पता}

{द्वितीय पक्षकार के हस्ताक्षर}

————————

*[Authoritative English Text of this Department Notification No. Agr.A(3)3/05 dated 4.3.2011 As required under Article 348(3) of the constitution of India]***.**

AGRICULTURE DEPARTMENT

NOTIFICATION

Shimla-2, 4th March, 2011

No. Agr. A(3)3/05.—In exercise of the Powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with Himachal Pradesh Public Service Commission, is pleased to make the following Rules further to amend the Himachal Pradesh, Agriculture Department, Junior Engineer, Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2010 notified vide this Department Notification No. Agr.A(3)-3/05, dated 02.01.2010 namely:—

1. Short title and commencement.—(i) These rules may be called the Himachal Pradesh, Agriculture Department, Junior Engineer, Class-III (Non Gazetted) Recruitment and Promotion (2nd Amendment) Rules, 2010.

(ii) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Annexure-"A".—In Annexure-A- to the Himachal Pradesh Agriculture Department, Junior Engineer, Class-III, (Non Gazetted) Recruitment and promotion Rules, 2009:-

(a) For the existing provisions against Col. No. 4, the following shall be substituted, namely:-
" Rs. 10300-34800+3800 Grade Pay"

(b) For the existing provisions against Col No. 15 the following shall be substituted, namely:—

Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

I. CONCEPT.—(a) Under this policy, the Junior Engineer in Agriculture Department, Himachal Pradesh will be engaged on contract basis initially for one year which may be extendable for more two years on year to year basis.

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed/extended.

(b) POST FALLS WITHIN THE PURVIEW OF HP SSSB.—The Director of Agriculture, H.P. after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. H.P. subordinate Service Selection Board, Hamirpur.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

II. CONTRACTUAL EMOLUMENTS.—The Junior Engineer appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 14100/-PM (which shall be equal to initial of the Pay Band + Grade pay). An amount of Rs. 430/- (3% of the minimum of Pay Band +Grade Pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

III. APPOINTING/DISCIPLINARY AUTHORITY.—The Director of Agriculture, H.P. will the appointing and disciplinary authority.

IV. SELECTION PROCESS.—Selection for appointment to the post in the case of Contractual appointment will be made on the basis of viva-voca test or if considered necessary or expedient by a written test or a practical test, the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e. HPSSSB Hamirpur.

V. COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.— As may be constituted by the concerned recruiting agency i.e. HPSSSB, Hamirpur.

VI. AGREEMENT.—After selection of a candidate, he/she has shall sign an agreement as per Annexure-B appended to these rules.

VII. TERMS AND CONDITIONS.—(a) The contract appointee will be paid fixed contractual amount@ Rs. 14100/- per month (which shall be equal to initial of the Pay Band + Grade Pay). An amount of Rs. 430/- (3% of the minimum of Pay Band+ Grade Pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(b) The service of the contract appointee will be purely on temporarily basis. The appointment is liable to be terminated in case the performance/ conduct of the contract appointee is not found satisfactory.

(c) Contractual appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contractual appointee. He/She shall not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per rules.

(d) Unauthorized absence from the service without the approval for the controlling Officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for any contractual amount for the period of absence from duty.

(e) An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner women candidate, pregnant beyond twelve weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized medical officer/practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to the regular counter part official at the minimum of pay scale.

(h) Provision of service rules like FR,SR, Leave Rules, CPF Rules, Pension Rules and Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this Column.

By order,
Sd/-
Secretary (Agr.).

Annexure-B

Form of contract/agreement to be executed between the Junior Engineer and the Government of Himachal Pradesh through Director of Agriculture

This agreement is made on this_____ day of _____ in the year_____Between Sh./Smt. _____ S/O/ D/O Shri_____ R/O_____Contract appointee (hereinafter called the FIRST PARTY), AND the Governor of Himachal Pradesh through Director of Agriculture Himachal Pradesh (here-in-after the SECOND PARTY). Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Junior Engineer on contract basis on the following terms & conditions.

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Junior Engineer for a period of one year commencing on day of _____ and ending on the day of _____. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall iso-facto stand terminated on the last working day i.e. on _____ and information notice shall not be necessary.

 Provided that for-further extended/renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed/extended.

2. The Contractual amount of the FIRST PARTY will be Rs. 14100/- per month.

3. The service of FIRST PARTY will be purely on temporarily basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/posted against the vacancy for which the first party was engaged on contract.

4. Contractual Junior Engineer will be entitled for one day casual leave after putting in one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual Junior Engineer. He will not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per Rules.

5. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A contractual Junior Engineer will not be entitled for contractual amount for the period of absence from duty.

6. An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practioner. In case of women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.

8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter-part official, at the minimum of the pay scale.

9. The Employees Group Insurance Scheme as well as EPF/CPF will not be applicable to contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESSES
(1) _____

(Name and full Address).
(2) _____

(Name and full Address).

(Signature of FIRST PARTY)

IN THE PRESENCE OF WITNESSES

(1) _____

(Name and full Address).

(2) _____

(Name and full Address).

(Signature of SECOND PARTY)

कृषि विभाग

अधिसूचना

शिमला–2, 4 मार्च, 2011

संख्या एग्र0ए0 (3)5/07.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, इस विभाग की अधिसूचना संख्या एग्र0ए0–3(6)95, तारीख 29 जनवरी, 2000 द्वारा अधिसूचित हिमाचल प्रदेश कृषि विभाग, सर्वेयर, वर्ग–III {अराजपत्रित} भर्ती एवं प्रोन्नति नियम, 2000 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात्

1. **संक्षिप्त नाम और प्रारम्भ.–**(I) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश कृषि विभाग, सर्वेयर, वर्ग–III {अराजपत्रित} भर्ती एवं प्रोन्नति (द्वितीय संशोधन) नियम, 2011 है।

(II) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. **उपाबन्ध–'क' का संशोधन.–**हिमाचल प्रदेश कृषि विभाग, सर्वेयर, वर्ग–III {अराजपत्रित} भर्ती एवं प्रोन्नति नियम, 2000 के उपाबन्ध–क में:–

(क) स्तम्भ संख्या 4 के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :– "5910–20200 रूपए जमा 2400 रूपए ग्रेड पे"।

(ख) स्तम्भ संख्या 15–क के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:–

15–क संविदा नियुक्ति द्वारा पद पर नियुक्ति के लिए चयन.–इन नियमों में से किसी बात के होते हुस भी पद पर संविदा नियुक्तियां नीचे दिए गए निबन्धनों और शर्तो के अध्यधीन की जाएगी:–

(I) संकल्पना.–(क) इस पॉलिसी के अधीन हिमाचल प्रदेश, कृषि विभाग में सर्वेयर को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर दो और वर्षों के लिए बढ़ाया जा सकेगा :

परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर विस्तार / नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण वर्ष के दौरान संतोषजनक पाया गया है और केवल तभी उसकी संविदा की अवधि को नवीकृत / विस्तारित जाएगी।

(ख) पद का हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड के कार्यक्षेत्र में आना.–निदेशक, कृषि, हिमाचल प्रदेश रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात्, अध्यपेक्षा को सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर के समक्ष रखेगा।

(ग) चयन, इन नियमों में विहित पात्रता शर्तो के अनुसार किया जाएगा।

(II) संविदात्मक उपलब्धियां.–संविदा के आधार पर नियुक्त सर्वेयर, को 8310 / –रूपए की समेकित नियत संविदात्मक रकम (जो पे बैंड के प्रारम्भिक जमा ग्रेड पे के बरावर होगी) प्रतिमास संदत्त की जाएगी। यदि संविदा में एक वर्ष से अधिक की बढ़ौतरी की जाती है, तो पश्चात्वर्ती वर्ष {वर्षों} के लिए संविदात्मक उपलब्धियों में 250 / –रूपए की रकम { पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत} वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी।

(III) नियुक्ति/अनुशासन प्राधिकारी.–निदेशक, कृषि, हिमाचल प्रदेश नियुक्ति और अनुशासन प्राधिकारी होगा।

(IV) चयन प्रक्रिया.–संविदा नियुक्ति की दशा में, पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि सम्बद्ध भर्ती अभिकरण, अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा अवधारित किया जाएगा।

(v) संविदात्मक नियुक्तियों के लिए चयन समिति.–जैसी सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा समय–समय पर गठित की जाए।

(VI) करार.–अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध–ख के अनुसार करार हस्ताक्षरित करना होगा।

(VII) निबन्धन औरैर शर्तें.–{क} संविदा के आधार पर नियुक्त व्यक्ति को 8310/– रूपए की नियत संविदात्मक रकम {जो पे बैंड के प्रारम्भिक जमा ग्रेड पे के बराबर होगी} प्रतिमास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष {वर्षों} के लिए संविदात्मक रकम में 250/– रूपए (पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा।

{ख} संविदा पर नियुक्त व्यक्ति की सेवा, पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त होगा।

{ग} संविदा पर नियुक्त व्यक्ति, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं है । वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

{घ} नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनाधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान {समापन} हो जाएगा। संविदा पर नियुक्त व्यक्ति, कर्त्तव्य {ड्यूटी} से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

{ड़} संविदा पर नियुक्त कर्मचारी जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां कहीं भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

{च} चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण–पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक की गर्भवती महिला, प्रसव होने तक अस्थाई तौर पर अनुपयुक्त बनी रहेगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

{छ} संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

{ज} नियमित कर्मचारी की दशा में यथा लागू सेवा नियमों के उपबन्ध जैसे एफ.आर.एस.आर., छुट्टी नियम, साधारण भविष्य निधि नियम, पैंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त

व्यक्तियों की दशा में लागू नही होगें। वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होगें।

आदेश द्वारा,
हस्ताक्षरित/–
सचिव {कृषि}।

————————

उपाबन्ध– ख

सर्वेययर और हिमाचल प्रदेश सरकार के मध्य निदेशक, कृषि हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप

यह करार श्री/श्रीमति..... पुत्र/पुत्री श्री निवासी, संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् 'प्रथम पक्षकार' कहा गया है), और हिमाचल प्रदेश की राज्यपाल के मध्य निदेशक, कृषि, हिमाचल प्रदेश (जिसे इसमें इसके पश्चात 'द्वितीय पक्षकार' कहा गया है) के माध्यम से आज तारीख को किया गया।

'द्वितीय पक्षकार' ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने सर्वेयर के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी हैः–

1. यह कि प्रथम पक्षकार सर्वेयर के रूप में से प्रारम्भ होने और को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस् को अर्थात दिन को स्वयंमेव ही पर्यवसित {समाप्त} हो जाएगी और सूचना नोटिस आवश्यक नहीं होगा। वर्षानुवर्ष आधार पर संविदा अवधि के विस्तारण/नवीकरण करने के लिए, विभागाध्यक्ष एक प्रमाण–पत्र जारी करेगा कि वर्ष के दौरान संविदा पर नियुक्त व्यक्ति की सेवा और आचरण संतोषजनक पाया गया है, और केवल तभी उसकी संविदा की अवधि विस्तारित/नवीकृत की जाएगी।

2. प्रथम पक्षकार की संविदात्मक रकम 8310/–रूपये प्रतिमास होगी।

3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरूद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को लगाया गया है, तो नियुक्ति पर्यवसित {समाप्त} की जाने के लिए दायी होगी।

4. संविदा पर नियुक्त सर्वेयर एक मास की सेवा पूरी करने के पश्चात एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त सर्वेयर को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

5. नियन्त्रक अधिकरी के अनुमोदन के बिना कर्त्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान {समापन} हो जाएगा। संविदा पर नियुक्त सर्वेयर कर्त्तव्य {ड्यूटी} से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

6 संविदा पर नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानांतरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

7. चयनित अभ्यर्थी को सरकारी / रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण–पत्र प्रस्तुत करना होगा। महिला अभ्यर्थीयों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक, उसे अस्थाई तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी / व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।

8. संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को लागू है, यात्रा भत्ते / दैनिक भत्ते का हकदार होगा / होगी।

9. संविदा पर नियुक्त व्यक्ति{यों} को कर्मचारी सामूहिक बीमा योजना के साथ–साथ ई0पी0एफ0 / जी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने–अपने हस्ताक्षर कर दिए हैं।

साक्षियों की उपस्थिति में
1.
.....
.....
{नाम व पूरा पता}
2.
.....
.....
{नाम व पूरा पता}

{प्रथम पक्षकार के हस्ताक्षर}

साक्षियों की उपस्थिति में
1.
.....
.....
{नाम व पूरा पता}
2.
.....
{नाम व पूरा पता}

{द्वितीय पक्षकार के हस्ताक्षर}

————————

[Authoritative English Text of this Department Notification No. Authoritative English Text of this Department Notification No. Agr.A(3)5/07 dated 4-3-2011 As required under Article 348(3) of the constitution of India).

AGRICULTURE DEPARTMENT

NOTIFICATION

Shimla-2, 4th March, 2011

No. Agr. A(3)5/2007.—In exercise of the Powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with Himachal Pradesh Public Service Commission, is pleased to make the following Rules further to amend the Himachal

Pradesh, Agriculture Department, Surveyor, Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2000 notified vide this Department Notification No. Agr.A-3(6)/95, dated 29.01.2000 namely:-

1. Short title and commencement.—(i) These rules may be called the Himachal Pradesh, Agriculture Department, Surveyor, Class-III (Non Gazetted) Recruitment and Promotion (2nd Amendment) Rules, 2011.

(ii) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Annexure-"A".—In Annexure-A- to the Himachal Pradesh Agriculture Department, Surveyor, Class-III, (Non Gazetted) Recruitment and promotion Rules, 2000:-

(a) For the existing provisions against Col. No. 4, the following shall be substituted, namely:-

" Rs. 5910-20200+2400 Grade Pay"

(b) For the existing provisions against the following shall be substituted, namely:-

(Selection for appointment to the post by contract appointment)

Notwithstanding anything contained in these rules, contract appointments to the post shall be made subject to the terms and conditions given below:-

I. CONCEPT.—(a) Under this policy, the Surveyor in Agriculture Department, Himachal Pradesh will be engaged on contract basis initially for one year which may be extendable for more two years on year to year basis.

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed/extended.

(b) POST FALLS WITHIN THE PURVIEW OF HP SSSB.—The Director of Agriculture, H.P. after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. H.P. subordinate Service Selection Board, Hamirpur.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

II. CONTRACTUAL EMOLUMENTS.—The Surveyor appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 8310/-PM (which shall be equal to initial of the Pay Band+ Grade pay). An amount of Rs. 250/- (3% of the minimum of Pay Band +Grade Pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

III. APPOINTING/DISCIPLINARY AUTHORITY.—The Director of Agriculture, H.P. will the appointing and disciplinary authority.

IV. SELECTION PROCESS.—Selection for appointment to the post in the case of Contractual appointment will be made on the basis of viva-voca test or if considered necessary or expedient by a written test or a practical test, the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e. HPSSSB Hamirpur.

V. COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.— As may be constituted by the concerned recruiting agency i.e. HPSSSB, Hamirpur.

VI. AGREEMENT.—After selection of a candidate, he/she has shall sign an agreement as per Annexure-B appended to these rules.

VII. TERMS AND CONDITIONS.—(a) The contract appointee will be paid fixed contractual amount@ Rs. 8310/- per month (which shall be equal to initial of the Pay Band + Grade Pay). An amount of Rs. 250/- (3% of the minimum of Pay Band+ Grade Pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(b) The service of the contract appointee will be purely on temporarily basis. The appointment is liable to be terminated in case the performance/ conduct of the contract appointee is not found satisfactory.

(c) Contractual appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contractual appointee. He/She shall not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per rules.

(d) Unauthorized absence from the service without the approval for the controlling Officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for any contractual amount for the period of absence from duty.

(e) An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner women candidate, pregnant beyond twelve weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized medical officer/practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to the regular counter part official at the minimum of pay scale.

(h) Provision of service rules like FR,SR, Leave Rules, GPF Rules, Pension Rules and Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this Column.

By order,
Sd/-
Secretary (Agr.).

Annexure-B

Form of contract/agreement to be executed between the Surveyor and the Government of Himachal Pradesh through Director of Agriculture

This agreement is made on this_____ day of _____ in the year_____ Between Sh./Smt. _____ S/O/ D/O Shri_____ R/O_____ Contract appointee (hereinafter called the FIRST PARTY), AND the Governor of Himachal Pradesh through Director of Agriculture Himachal Pradesh (here-in-after theSECOND PARTY). Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Surveyor on contract basis on the following terms & conditions.

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Surveyor for a period of one year commencing on day of _____ and ending on the day of _____. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall iso-facto stand terminated on the last working day i.e. on _____ and information notice shall not be necessary.

 Provided that for-further extended/renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed/extended.

2. The Contractual amount of the FIRST PARTY will be Rs. 8310/- per month.

3. The service of FIRST PARTY will be purely on temporarily basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/posted against the vacancy for which the first party was engaged on contract.

4. Contractual Surveyor will be entitled for one day casual leave after putting in one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual Surveyor. He will not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per Rules.

5. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A contractual Surveyor will not be entitled for contractual amount for the period of absence from duty.

6. An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practioner. In case of women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.

8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter-part official, at the minimum of the pay scale.

9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESSES
(1) _____

(Name and full Address).
(2) _____

(Name and full Address).

(Signature of FIRST PARTY)

IN THE PRESENCE OF WITNESSES
(1) _____

(Name and full Address).
(2) _____

(Name and full Address).

(Signature of SECOND PARTY)

कृषि विभाग

अधिसूचना

शिमला– 2, 4 मार्च, 2011

संख्या एग्र0ए0(3)6/07.— हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, इस विभाग की अधिसूचना संख्या एग्र0 ए0{3}32 / 95, तारीख 24.12.1997 द्वारा अधिसूचित हिमाचल प्रदेश कृषि विभाग, कनिष्ठ प्रारूपकार, वर्ग– III {अराजपत्रित} भर्ती और प्रोन्नति नियम 1997 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :

1. **संक्षिप्त नाम और प्रारम्भ.–**(i) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश कृषि विभाग, कनिष्ठ प्रारूपकार, वर्ग–III {अराजपत्रित} भर्ती और प्रोन्नति द्वितीय संशोधन नियम, 2010 है।

(ii) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. **उपाबन्ध–'क' का संशोधन.–**हिमाचल प्रदेश कृषि विभाग, कनिष्ठ प्रारूपकार, वर्ग–III {अराजपत्रित} भर्ती और प्रोन्नति नियम, 1997 के उपाबन्ध–क में:–

(क) स्तम्भ संख्या 4 के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :–
"5910–20200 रूपए जमा 2400 रूपए ग्रेड पे "

(ख) स्तम्भ संख्याः 15 के पश्चात् निम्नलिखित स्तम्भ संख्या 15–क अतः स्थापित की जाएगी अर्थात्:–

स्तम्भ संख्या 15–क के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :–इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियां नीचे दिए गए निबन्धनों और शर्तों के अध्यधीन की जाएगीः–

(I) संकल्पना.–(क) इस पॉलिसी के अधीन हिमाचल प्रदेश, कृषि विभाग में कनिष्ठ प्रारूपकार को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा। परन्तु वषार्नुवर्ष आधार पर संविदा अवधि के विस्तार/नवीकरण करने के लिए विभागाध्यक्ष एक प्रमाण पत्र जारी करेगा कि वर्ष के दौरान संविदा पर नियुक्त व्यक्ति की सेवा और आचरण संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि को विस्तारित/नवीकृत किया जा सकेगा।

(ख) **पद का हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड के कार्यक्षेत्र में आना.**–निदेशक, कृषि, हिमाचल प्रदेश रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात्, अध्यपेक्षा को सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर के समक्ष रखेगा।

(ग) चयन, इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा।

(II) संविदात्मक उपलब्धियां.–संविदा के आधार पर नियुक्त कनिष्ठ प्रारूपकार को 8310/–रूपए की समेकित नियत संविदात्मक रकम {जो पे बैंड के न्यूनतम जमा ग्रेड पे के बरावर होगी} प्रतिमास संदत्त की जाएगी। यदि संविदा में एक वर्ष से अधिक की बढ़ौतरी की जाती है, तो पश्चात्वर्ती वर्ष {वर्षों} के लिए संविदात्मक उपलब्धियों में 250/–रूपए की रकम {पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत} वाषिर्क वृद्धि के रूप में अनुज्ञात की जाएगी।

(III) नियुक्ति/अनुशासन प्राधिकारी.–निदेशक, कृषि, हिमाचल प्रदेश नियुक्ति और अनुशासन प्राधिकारी होगा।

(IV) चयन प्रक्रिया.–संविदा नियुक्ति की दशा में, पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा निर्धारित किया जाएगा।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति.–जैसी सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा गठित की जाए।

(VI) करार.–अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध–ख के अनुसार करार हस्ताक्षरित करना होगा।

(VII) निबन्धन और शर्तें.–{क} संविदा के आधार पर नियुक्त व्यक्ति को 8310/– रूपए की नियत संविदात्मक रकम {जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी} प्रतिमास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष {वर्षों} के लिए संविदात्मक रकम में 250/– रूपए {पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत} की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा।

{ख} संविदा पर नियुक्त व्यक्ति की सेवा, पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी।

{ग} संविदा पर नियुक्त व्यक्ति, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

{घ} नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनाधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान {समापन} हो जाएगा। संविदा पर नियुक्त व्यक्ति, कर्त्तव्य {ड्यूटी} से अनुपस्थिति की अवधि के लिए किसी संविदात्मक रकम का हकदार नहीं होगा।

{ङ} संविदा पर नियुक्त कर्मचारी जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण का पात्र होगा, जहां कहीं भी प्रशासनिक कारणों से ऐसा करना अपेक्षित हो।

{च} चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण–पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक की गर्भवती महिला, प्रसव होने तक अस्थाई तौर पर अनुपयुक्त बनी रहेगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

{छ} संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

{ज} नियमित कर्मचारी की दशा में यथा लागू सेवा नियमों के उपबन्ध जैसे एफ.आर. एस.आर., छुट्टी नियम, पैंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे ।

आदेश द्वारा,
हस्ताक्षरित/–
सचिव {कृषि}।

————

उपाबन्ध– ख

कनिष्ठ प्रारूपकार और हिमाचल प्रदेश सरकार के मध्य निदेशक, कृषि हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप

यह करार श्री/श्रीमति..... पुत्र/पुत्री श्री निवासी, संविदा पर नियुक्त व्यक्ति {जिसे इसमें इसके पश्चात् 'प्रथम पक्षकार' कहा गया है}, और हिमाचल प्रदेश की राज्यपाल के मध्य निदेशक, कृषि, हिमाचल प्रदेश (जिसे इसमें इसके पश्चात 'द्वितीय पक्षकार' कहा गया है) के माध्यम से आज तारीख को किया गया।

'द्वितीय पक्षकार' ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने कनिष्ठ प्रारूपकार के रूप में संविदा आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है:–

1. यह कि प्रथम पक्षकार कनिष्ठ प्रारूपकार के रूप में से प्रारम्भ होने और.....को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस् को अर्थात दिन को स्वयंमेव ही पर्यवसित {समाप्त}

समझी जाएगी और सूचना नोटिस आवश्यक नहीं होगा। परन्तु संविदा अवधि का विस्तारण/नवीकरण करने के लिए, विभागाध्यक्ष एक प्रमाण–पत्र जारी करेगा कि वर्ष के दौरान संविदा पर नियुक्त व्यक्ति की सेवा और आचरण संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि को विस्तारित/नवीकृत किया जा सकेगा।

2. प्रथम पक्षकार की संविदात्मक रकम 8310/–रूपये प्रतिमास होगी।

3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरूद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को लगाया गया है, तो नियुक्ति पर्यवसित {समाप्त} की जाने के लिए दायी होगी।

4. संविदा पर नियुक्त कनिष्ठ प्रारूपकार एक मास की सेवा पूरी करने के पश्चात एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त कनिष्ठ प्रारूपकार को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

5. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्त्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान {समापन} हो जाएगा। संविदा पर नियुक्त कनिष्ठ प्रारूपकार कर्त्तव्य {डयूटी} से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

6. संविदा पर नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानांतरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

7. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण–पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक, उसे अस्थाई तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृतृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।

8. संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

9. संविदा पर नियुक्त व्यक्ति{यों} को कर्मचारी सामूहिक बीमा योजना के साथ–साथ इ0पी0एफ0/सी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने–अपने हस्ताक्षर कर दिए हैं।

साक्षियों की उपस्थिति में

1.

.....

.....

{नाम व पूरा पता}

2.

.....

.....

{नाम व पूरा पता}

{प्रथम पक्षकार के हस्ताक्षर}

साक्षियों की उपस्थिति में

1.

.....

.....

{नाम व पूरा पता}

2.

.....

.....

{नाम व पूरा पता}

{द्वितीय पक्षकार के हस्ताक्षर}

[Authoritative English Text of this Department Notification No. Agr.-A(3)6/2007 dated 4.3.2011 As required under Article 348(3) of the constitution of India].

AGRICULTURE DEPARTMENT

NOTIFICATION

Shimla-2, 4th March, 2011

No. Agr. A (3)6/2007.—In exercise of the Powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with Himachal Pradesh Public Service Commission, is pleased to make the following Rules further to amend the Himachal Pradesh Agriculture Department Junior Draughtsman, Class-III (Non- Gazetted) Recruitment and Promotion Rules, 1997 notified vide this Department Notification No. Agr.A(3)-32/95, dated 24th December, 1997 namely:-

1. Short title and commencement.—(i) These rules may be called the Himachal Pradesh Agriculture Department, Junior Draughtsman, Class-III (Non Gazetted) Recruitment and Promotion (2nd Amendment) Rules, 2010.

(ii) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Annexure-"A".—In Annexure-A- to the Himachal Pradesh Agriculture Department Junior Draughtsman, Class-III, (Non Gazetted) Recruitment and promotion Rules, 1997:-

(a) For the existing provisions against Col. No. 4, the following shall be substituted, namely:-

" Rs. 5910-20200+2400 Grade Pay"

(b) For the existing provisions against Col.No.15, the following shall be substituted, namely:-

Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

I. CONCEPT.—(a) Under this policy, the Junior Draughtsman in Agriculture Department Himachal Pradesh will be engaged on contract basis initially for one year which may be extendable for more two years on year to year basis.

Provided that for extension/renewal of contract period one year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed/extended.

(b) POST FALLS WITHIN THE PURVIEW OF HP SSSB.—The Director of Agriculture, H.P. after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. H.P. subordinate Service Selection Board, Hamirpur.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

II. CONTRACTUAL EMOLUMENTS.—The Junior Draughtsman appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 8310/-PM (which shall be equal to initial of the Pay Band + Grade pay). An amount of Rs. 250/- (3% of the minimum of Pay Band +Grade Pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

III. APPOINTING/DISCIPLINARY AUTHORITY.—The Director of Agriculture, H.P. will the appointing and disciplinary authority.

IV. SELECTION PROCESS.—Selection for appointment to the post in the case of Contractual appointment will be made on the basis of viva-voca test or if considered necessary or expedient by a written test or a practical test, the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e. HPSSSB Hamirpur.

V. COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.— As may be constituted by the concerned recruiting agency i.e. HPSSSB, Hamirpur.

VI. AGREEMENT.—After selection of a candidate, he/she has shall sign an agreement as per Annexure-B appended to these rules.

VII. TERMS AND CONDITIONS.—(a) The contract appointee will be paid fixed contractual amount@ Rs. 8310/- per month (which shall be equal to initial of the Pay Band + Grade Pay). An amount of Rs. 250/- (3% of the minimum of Pay Band+ Grade Pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(b) The service of the contract appointee will be purely on temporarily basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contractual appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contractual appointee. He/She shall not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per rules.

(d) Unauthorized absence from the service without the approval for the controlling Officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for any contractual amount for the period of absence from duty.

(e) An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis whenever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner women candidate, pregnant beyond twelve weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized medical officer/practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to the regular counter part official at the minimum of pay scale.

(h) Provision of service rules like FR,SR, Leave Rules, CPF Rules, Pension Rules and Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this Column.

By Order,
Sd/-
Secretary (Agr.).

Form of contract/agreement to be executed between the Junior Draughtsman and the Government of Himachal Pradesh through Director of Agriculture.

This agreement is made on this_____ day of _____ in the year_____ Between Sh./Smt. _____ S/O/ D/O Shri_____ R/O_____ Contract appointee (hereinafter called the FIRST PARTY), AND the Governor of Himachal Pradesh through Director of Agriculture Himachal Pradesh (here-in-after the SECOND PARTY). Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Junior Draughtsman on contract basis on the following terms & conditions.

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Junior Draughtsman for a period of one year commencing on day of _____ and ending on the day of _____. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall isofacto stand terminated on the last working day i.e. on _____ and information notice shall not be necessary.

Provided that for-further extended/renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed/extended.

2. The Contractual amount of the FIRST PARTY will be Rs. 8310/- per month.

3. The service of FIRST PARTY will be purely on temporarily basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/posted against the vacancy for which the first party was engaged on contract.

4. Contractual Junior Draughtsman will be entitled for one day casual leave after putting in one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual Junior Draughtsman. He will not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per Rules.

5. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A contractual Junior Draughtsman will not be entitled for contractual amount for the period of absence from duty.

6. An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis whenever required on administrative grounds.

7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practioner. In case of women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.

8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter-part official, at the minimum of the pay scale.

9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESSES

(1) _____

(Name and full Address).
(2) _____

(Name and full Address).

(Signature of FIRST PARTY)

IN THE PRESENCE OF WITNESSES
(1) _____

(Name and full Address).

(2) _____

(Name and full Address).

(Signature of SECOND PARTY)

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 66/2007
Date of Institution : 2.6.2007
Date of decision : 29.11.2010

Shri Yudhveer Singh S/o Shri Bhag Chand, R/o Village Model Town, Manali, District Kullu, H.P.
....Petitioner.

Versus

1. The Managing Director, M/s. Lahoul Potato Growers Co-operative Marketting-cum-Processing Society Ltd. Manali, District Kullu, H.P.
2. The Registrar, Co-operative Societies, Government of H.P. Shimla, H.P. *....Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondents : Sh. R.L. Kaith, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> **"Whether the action of the (1) Managing Director, M/s. Lahoul Potato Growers Co-operative Marketting-cum-Processing Society Ltd. Manali, District Kullu, H.P. (2) The Registrar, Cooperative Societies, Government of H.P. Shimla-9 to give break in service to Shri Yudhveer Singh S/o Shri Bhag Chand workman during his service period time and again and finally terminated w.e.f.21.4.1999 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"**

2. In furtherance to the reference, the case set out by the petitioner in brief is that he was engaged as a daily waged workman on muster roll basis on 1.1.1995.

3. The employer society was indulging in unfair labour practices and as a sequel thereto the daily wagers had formed a Union known by the name of L.P.S. Mazdoor Sangh. They had issued a demand notice on 2.6.1999, followed by a reminder on 13.7.1999. During the pendency of the said demand the services of the petitioner and other workmen, who were the members of the Union was illegally retrenched, though there was sufficient work available with the respondent.

4. The services of the petitioner was terminated on 21.4.1999 without any notice and compensation, oblivious of the fact that the petitioner had completed more than 240 days in each calendar year.

5. It is also averred by the petitioner that the employer had been giving fictional and illegal breaks to the petitioner without any fault on his part. The respondents even retained persons junior to the petitioner namely Santosh Kumari, Maheshwar Singh, Vikash, Balbir, Ravinder Singh etc. The respondents had also engaged new hands but the petitioner was never offered any opportunity of reengagement.

6. The petitioner thus seeks that his oral termination on 21.4.1999 be set aside and quashed. He may be directed to be reengaged along with back wages and all other consequential benefits.

7. While contesting the claim the respondent No.2 has not filed any reply and nor contested the claim. The respondent society has however raised the preliminary objections that the society having being registered under the H.P. Cooperative Societies Act, 1968 the claim was without jurisdiction and that the petitioner having been appointed for a specified period the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) were not attracted in the present case.

8. On merits it is the case of the respondent society that the work with the society is of a seasonal nature. In order to meet the requirements of the society the workmen are engaged on seasonal basis or a specified period. These workmen are disengaged in accordance with law on the culmination of the potato season. It is further averred by the

respondent that the services of the petitioner were not dispensed with a malafide intention or vindictive attitude. It was after the culmination of the potato season that the petitioner was eased out with an assurance that he would be reengaged during the next season. The petitioner was recalled in the next season but he did not join. The workmen were stated to have not been retrenched within the meaning of Section 2(oo).

9. The respondent further averred that the petitioner was always appointed for a specified period and not on regular basis. On culmination of the specified period the services of the petitioner stood automatically terminated and as such the compliance of the provisions of Section 25-F of the Industrial Disputes Act does not arise. The petitioner was engaged intermittently on seasonal basis or specified period of work. It is denied that the petitioner had completed 240 days during the preceding 12 months of his disengagement.

10. As per the respondents the petitioner had been offered due opportunity on opening of the potato season in the year 2000, for a period of 89 days, but, he did not report for duty. Consequently certain workmen namely Santosh Kumari, Maheshwar Singh, Vikash and Balbir had to be reengaged for 89 days. It is thus averred that the petitioner is not entitled to any relief claimed by him.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 6.1.2009 the following issues came to be framed by my ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent 1 is unlawful. If so, what relief of service benefits the petitioner is entitled to? OPP
2. Whether the respondent 1 had been giving fictional breaks in the services of the petitioner without any fault on his (petitioner) part. OPP
3. Whether the work of M/s. Lahaul Potato Grower's Cooperative Marketting-cum-Processing Society Ltd. Manali, Distt. Kullu, H.P. is of seasonal nature and the petitioner was engaged intermittently on the seasonal basis for a specific period. If so, to what effect. OPR
4. Whether the petitioner's removal from service does not fall within mischief of section 2(oo) of the Industrial Disputes Act, 1947. OPR
5. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 :	Yes
Issue No. 2 :	Yes
Issue No. 3 :	No
Issue No. 4 :	No
Relief :	Allowed as per operative part part of the award.

REASONS FOR FINDINGS

ISSUES No. 2, 3 AND 4.

14. All the three issues being intermingled and co-related are taken up together for discussion.

15. Before considering the question of termination it would be apposite to first and foremost consider the question of the nature of the engagement i.e. whether the engagement was seasonal or intermittent in nature the breaks given thereupon were fictional or not.

16. The case set up by the petitioner simplicitor is that he was appointed for 89 days and thereupon given fictional breaks. He was however again reemployed for 89 days and the process continued as such w.e.f. 1.1.1995 till 21.4.1999 when his services were eventually disengaged.

17. On the contrary the respondent has portrayed that the work available with them is seasonal in nature. The workmen are engaged by the society on seasonal basis for a specified period i.e. during the potato season and thereafter the workmen are disengaged. The petitioner as such had been engaged intermittently on seasonal basis for specified period of 89 days in accordance with the exigency of work.

18. In order to substantiate the plea so raised by the petitioner he has appeared as his own witness, PW1. The petitioner has reiterated the stand taken by him in the statement of claim. He has also further placed on record his

mandays for the preceding 12 months of his termination vide Ex. PA-1, whereby he is shown to have completed 277 days.

19. On the other hand the respondents have examined the Managing Director Sh. Nawang Bodh as RW1 in order to substantiate their contention. The Managing Director of the society who has appeared as RW1 has deposed that during the potato season the society engages need based workmen for a specified period on daily wages every year. Likewise the petitioner had been engaged by the society and his services had come to an end on completion of the specified period of his employment. He was appointed on daily wages without asking for a requisition from the employment exchange. Since the petitioner had not completed 240 days during the preceding 12 months of his termination no notice was required to be served on him. Even assuming the petitioner had completed 240 days even then, he cannot claim reinstatement since the petitioner had been appointed dehors appointment rules i.e. without notifying the vacancy through the employment exchange. The respondent witness has also placed on record one office order dated 24.1.2007 and a resolution of the society dated 17.1.2007 whereby the allowances of the employees of the society have been ordered to be frozen.

20. Though the respondents have taken a categorically stand that the petitioner was appointed for seasonal work and that too during the potato season and that after the specified period the services of the petitioner had automatically come to an end. But it is also not denied by the respondent that the petitioner used to offer appointment for 89 days by issuing office orders. The petitioner has placed on record Ex. PA-1 whereby he has been shown to have put in more than 240 days in the preceding 12 months of his termination. A bare glance at the documents on record show that the petitioner had been offered appointment uninterruptedly, till his termination on 21.4.1999. In the last 12 months prior to his termination the petitioner has worked for 277 days, as is clear from Ex. PA-1. The letters on record show that except for giving a break of a day or so the petitioner was invariably offered appointment for 89 days continuously. As per the appointment letters on record invariably after about 89 days the petitioner was offered appointment continuously from 1.1.1995 till 21.4.1999. The plea and testimony of the respondents that the petitioner had been engaged only for work in the potato season is thus falsified and belied by their own documents issued to the petitioner. Nothing to the contrary has been proved on record by the respondent. Rather, tacitly the respondent had admitted that the petitioner was appointed for 89 days by way of the appointment letters on record.

21. Not only this the documentary evidence on record as discussed above clearly shows that the petitioner had completed more than 270 days in the 12 months preceding his termination. Thus, even otherwise it cannot be inferred that a person having worked for more than 270 days was a seasonal worker. It is thus clear that even the intention of the respondents themselves was not such as to engage the petitioner for a specified period, as alleged. Apparently it seems to be a ploy to defeat the rights of a workman as envisaged under the provisions of Industrial Disputes Act, more particularly the provisions of Section 25-F thereto. The aforesaid practice of the respondents to employ the petitioner uninterruptedly, but for 89 days each clearly falls within the ambit and scope of unfair labour practice and as such it cannot even be said that the petitioner's removal from service is protected under Section 2(oo) of the Industrial Disputes Act. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled Haryana State Electronics Development Ltd. vs. Mamni (AIR 2006 SC 2427).

22. Strangely the respondent society has raised a plea that since the engagement of the petitioner is dehors the appointment rules the subsequent disengagement was legal. Even if he has completed 240 days in the preceding 12 months it cannot claim reinstatement. The aforesaid plea in fact has not been raised in the reply filed by the society. It has been raised by the Managing Director who has appeared a RW1 while appearing as his own witness. However nothing has been produced on record to show as to what were and are the appointment rules governing the society. It is thus sought to be portrayed that since the petitioner was not engaged through employment exchange their initial engagement is bad in the eyes of law.

23. Though this ground was never taken by the respondents in their pleadings and as such the petitioner could not have been taken unaware that is without affording opportunity to the petitioner to explain the circumstances. But the fact remains that the respondents have even miserably failed to place on record the rules governing appointments in the society and as such the bald statement of RW1 cannot be believed that the appointment itself was dehors the rules. Even otherwise the appointment of the petitioner was on daily wage basis. It has been made after the concurrence of the board of directors. The initial engagement, thus, also cannot be said to be in violation of any rule as none but the board of directors had agreed to the appointment of the petitioner.

24. The ld. counsel for the respondents to buttress his contention that because of the illegal appointment of the petitioner the protection of the provisions of Section 25-F cannot be granted to the petitioner has placed reliance on a judgments of the Hon'ble Punjab and Haryana High Court titled as Chief Engineer, RSD, Irrigation Works and Anr. vs. Suresh Kumar (2009 (1) SCT 163) and Divisional Forest Officer vs. Mangat Ram & Anr. (2009 (1) SCT 62), a judgment of Hon'ble Supreme Court titled as Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh and Ors. (2007) 2 SCC (L&S) 441 and Accounts Officer (A&I) APSRTC and Ors. vs. K.V. Ramana & Ors. (2007 (3) SLR 440). Since

the respondents have failed to prove that the appointment of the petitioner was against the recruitment rules of the respondents society the ratio laid by the Hon'ble Punjab and Haryana High Court in Suresh Kumar and Mangat Ram's case discussed hereinabove supra do not come to the rescue of the respondent.

25. The ratio of the K.V. Ramana and Dan Bahadur Singh's case also does not apply to the facts and circumstances of the present case as admittedly by now it is well settled that long working period cannot be regularized dehors the rules. The present case does not pertain to regularization, and in any case regularization if any has to be subject to the availability of post and policy thereupon in respect of regularization. Per se the petitioner cannot claim for regularization even after having put in long and uninterrupted service with the respondents. Nonetheless the aforesaid ratio does not apply to the facts and circumstances of the present case. For all the reasons discussed above it is to be held that the petitioner was not appointed for seasonal work and that too intermittently. The respondent in fact had been giving fictional breaks to the petitioner after every 89 days to frustrate the provisions of Section 25-F of the Act, though they continued employing the petitioner uninterruptedly from 1.1.1995 till 21.4.1999. In view of the matter it cannot further also said that the termination of the petitioner was protected by the provisions of Section 2(oo) of the Industrial Disputes Act. All the three issues are decided in favour of the petitioner and against the respondents.

ISSUE No. 1

26. Now reverting back to the core issue as to whether the termination of the petitioner by the respondent no.1 was unlawful or not, suffice it to say that for the reasons recorded in relation to the issues no.2,3 and 4, discussed hereinabove supra it is clear that the petitioner has completed more than 240 days in the preceding 12 months of his termination. The discussion held hereinabove points to only this conclusion. The documentary evidence on record more particularly Ex. PA-1 further falsifies the claim of the respondent and provides support to the case set up by the petitioner.

27. The case set up by the petitioner is further fortified by Ex. PA-2 to PA- 5 whereby the petitioner and the other workmen had raised a demand charter before the respondents and which apparently led to the termination of the petitioner. The said fact is very candidly and categorically admitted by the Managing Director of the respondent society while appearing as RW1. In his cross-examination he has admitted that the petitioner and other workmen had formed a workers union and offended by the same their services have been dispensed with by the society. Even if that were so the respondent society was under a legal obligation to have atleast resorted to the provisions of Section 25-F of the Industrial Disputes Act and thereupon disengage the services of the petitioner. No such steps were taken by the respondent society. The petitioner having worked uninterruptedly from 1.1.1995 till 21.4.1999 and having completed more than 240 days immediately preceding 12 months of his termination was entitled to the protection of the Act. Not only this, the respondent has even otherwise flagrantly violating the provisions of the Industrial Disputes Act by offering appointment to the petitioner for 89 days and thereupon giving him fictional breaks to merely deprive him of his legal rights envisaged under the Industrial Disputes Act. It was nothing but an act of unfair labour practice. Apparently and as has been categorically admitted by the Managing Director the petitioner and the other workmen had been shown the door for having raised an union and a demand under the provisions of the Industrial Disputes Act. The termination of the petitioner thus cannot be sustained in any manner. Consequently the termination of the petitioner is held to be illegal. It is set aside and quashed. The respondent is directed to reengage the petitioner at the same place and post forthwith. The petitioner shall be entitled to continuity and seniority in service from the date of his illegal termination.

28. Though the petitioner has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness but seeing to the financial health of the society, as is reflected per Ex. RW1/B and Ex. RW1/C it seems to be dismal. I do not think it just and proper to award back wages to the petitioner. Nonetheless seeing to the fact that the respondents had flagrantly violated the provisions of the Industrial Disputes Act and had been rather trying to defeat the provisions of the Act as has been discussed hereinabove it is ordered that the respondent shall pay an amount of Rs.25,000/- to the petitioner as lump sum compensation in lieu of the back wages. The issue decided accordingly.

RELIEF

29. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. He is entitled to continuity and seniority in service from the date of his illegal termination. The petitioner is also entitled to Rs.25,000/- as lump sum compensation in lieu of back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 29th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 65/2007
Date of Institution : 2.6.2007
Date of decision : 29.11.2010

Shri Abhay Ram S/o Shri Ishwaroo Ram, R/o Village Bhosh, P.O. Haripur, District Kullu, H.P. ….*Petitioner.*

Versus

1. The Managing Director, M/s. Lahoul Potato Growers Co-operative Marketting-cum-Processing Society Ltd. Manali, District Kullu, H.P.
2. The Registrar, Co-operative Societies, Government of H.P. Shimla, H.P. ….*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondents : Sh. R.L. Kaith, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the action of the (1) Managing Director, M/s. Lahoul Potato Growers Co-operative Marketting-cum-Processing Society Ltd. Manali, District Kullu, H.P. (2) The Registrar, Cooperative Societies, Government of H.P. Shimla-9 to give break in service to Shri Abhay Ram S/o Shri Ishwaroo Ram workman during his service period time and again and finally terminated w.e.f.22.4.1999 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In furtherance to the reference, the case set out by the petitioner in brief is that he was engaged as a daily waged workman on muster roll basis on 1.8.1995.

3. The employer society was indulging in unfair labour practices and as a sequel thereto the daily wagers had formed a Union known by the name of L.P.S. Mazdoor Sangh. They had issued a demand notice on 2.6.1999, followed by a reminder on 13.7.1999. During the pendency of the said demand the services of the petitioner and other workmen, who were the members of the Union was illegally retrenched, though there was sufficient work available with the respondent.

4. The services of the petitioner was terminated on 22.4.1999 without any notice and compensation, oblivious of the fact that the petitioner had completed more than 240 days in each calendar year.

5. It is also averred by the petitioner that the employer had been giving fictional and illegal breaks to the petitioner without any fault on his part. The respondents even retained persons junior to the petitioner namely Santosh Kumari, Maheshwar Singh, Vikash, Balbir, Ravinder Singh etc. The respondents had also engaged new hands but the petitioner was never offered any opportunity of reengagement.

6. The petitioner thus seeks that his oral termination on 22.4.1999 be set aside and quashed. He may be directed to be reengaged along with back wages and all other consequential benefits.

7. While contesting the claim the respondent No.2 has not filed any reply and nor contested the claim. The respondent society has however raised the preliminary objections that the society having being registered under the

H.P. Cooperative Societies Act, 1968 the claim was without jurisdiction and that the petitioner having been appointed for a specified period the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) were not attracted in the present case.

8. On merits it is the case of the respondent society that the work with the society is of a seasonal nature. In order to meet the requirements of the society the workmen are engaged on seasonal basis or a specified period. These workmen are disengaged in accordance with law on the culmination of the potato season. It is further averred by the respondent that the services of the petitioner were not dispensed with a malafide intention or vindictive attitude. It was after the culmination of the potato season that the petitioner was eased out with an assurance that he would be reengaged during the next season. The petitioner was recalled in the next season but he did not join. The workmen were stated to have not been retrenched within the meaning of Section 2(oo).

9. The respondent further averred that the petitioner was always appointed for a specified period and not on regular basis. On culmination of the specified period the services of the petitioner stood automatically terminated and as such the compliance of the provisions of Section 25-F of the Industrial Disputes Act does not arise. The petitioner was engaged intermittently on seasonal basis or specified period of work. It is denied that the petitioner had completed 240 days during the preceding 12 months of his disengagement.

10. As per the respondents the petitioner had been offered due opportunity on opening of the potato season in the year 2000, for a period of 89 days, but, he did not report for duty. Consequently certain workmen namely Santosh Kumari, Maheshwar Singh, Vikash and Balbir had to be reengaged for 89 days. It is thus averred that the petitioner is not entitled to any relief claimed by him.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 6.1.2009 the following issues came to be framed by my ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent 1 is unlawful. If so, what relief of service benefits the petitioner is entitled to? OPP
2. Whether the respondent 1 had been giving fictional breaks in the services of the petitioner without any fault on his (petitioner) part. OPP
3. Whether the work of M/s. Lahaul Potato Grower's Cooperative Marketting-cum-Processing Society Ltd. Manali, Distt. Kullu, H.P. is of seasonal nature and the petitioner was engaged intermittently on the seasonal basis for a specific period. If so, to what effect. OPR
4. Whether the petitioner's removal from service does not fall within mischief of section 2(oo) of the Industrial Disputes Act, 1947. OPR
5. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 :	Yes
Issue No. 2 :	Yes
Issue No. 3 :	No
Issue No. 4 :	No
Relief :	Allowed as per operative part part of the award.

REASONS FOR FINDINGS

ISSUES No. 2, 3 AND 4.

14. All the three issues being intermingled and co-related are taken up together for discussion.

15. Before considering the question of termination it would be apposite to first and foremost consider the question of the nature of the engagement i.e. whether the engagement was seasonal or intermittent in nature the breaks given thereupon were fictional or not.

16. The case set up by the petitioner simplicitor is that he was appointed for 89 days and thereupon given fictional breaks. He was however again reemployed for 89 days and the process continued as such w.e.f. 1.8.1995 till 22.4.1999 when his services were eventually disengaged.

17. On the contrary the respondent has portrayed that the work available with them is seasonal in nature. The workmen are engaged by the society on seasonal basis for a specified period i.e. during the potato season and thereafter the workmen are disengaged. The petitioner as such had been engaged intermittently on seasonal basis for specified period of 89 days in accordance with the exigency of work.

18. In order to substantiate the plea so raised by the petitioner he has appeared as his own witness, PW1. The petitioner has reiterated the stand taken by him in the statement of claim. He has also further placed on record the transfer letters issued to him on 28.6.1996 as Ex. PA-2 and his mandays for the last 12 months, preceding his termination vide Ex. PA-1, whereby the petitioner has put in 320 days.

19. On the other hand the respondents have examined the Managing Director Sh. Nawang Bodh as RW1 in order to substantiate their contention. The Managing Director of the society who has appeared as RW1 has deposed that during the potato season the society engages need based workmen for a specified period on daily wages every year. Likewise the petitioner had been engaged by the society and his services had come to an end on completion of the specified period of his employment. He was appointed on daily wages without asking for a requisition from the employment exchange. Since the petitioner had not completed 240 days during the preceding 12 months of his termination no notice was required to be served on him. Even assuming the petitioner had completed 240 days even then, he cannot claim reinstatement since the petitioner had been appointed dehors appointment rules i.e. without notifying the vacancy through the employment exchange. The respondent witness has also placed on record one office order dated 24.1.2007 and a resolution of the society dated 17.1.2007 whereby the allowances of the employees of the society have been ordered to be frozen.

20. Though the respondents have taken a categorically stand that the petitioner was appointed for seasonal work and that too during the potato season and that after the specified period the services of the petitioner had automatically come to an end. But it is also not denied by the respondent that the petitioner used to offer appointment for 89 days by issuing office orders. The petitioner has placed on record Ex. PA-1 whereby he has been shown to have put in more than 240 days in the preceding 12 months of his termination. A bare glance at the documents on record show that the petitioner had been offered appointment uninterruptedly, till his termination on 22.4.1999. The letters on record show that except for giving a break of a day or so the petitioner was invariably offered appointment for 89 days continuously. As per the appointment letters on record invariably after about 89 days the petitioner was offered appointment continuously from 1.1.1995 till 22.4.1999. In the last 12 months prior to his termination the petitioner has worked for 320 days, as is clear from Ex. PA-1. The plea and testimony of the respondents that the petitioner had been engaged only for work in the potato season is thus falsified and belied by their own documents issued to the petitioner. Nothing to the contrary has been proved on record by the respondent. Rather, tacitly the respondent had admitted that the petitioner was appointed for 89 days by way of the appointment letters on record.

21. Not only this the documentary evidence on record as discussed above clearly shows that the petitioner had completed more than 270 days in the 12 months preceding his termination. Thus, even otherwise it cannot be inferred that a person having worked for more than 270 days was a seasonal worker. It is thus clear that even the intention of the respondents themselves was not such as to engage the petitioner for a specified period, as alleged. Apparently it seems to be a ploy to defeat the rights of a workman as envisaged under the provisions of Industrial Disputes Act, more particularly the provisions of Section 25-F thereto. The aforesaid practice of the respondents to employ the petitioner uninterruptedly, but for 89 days each clearly falls within the ambit and scope of unfair labour practice and as such it cannot even be said that the petitioner's removal from service is protected under Section 2(oo) of the Industrial Disputes Act. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled Haryana State Electronics Development Ltd. vs. Mamni (AIR 2006 SC 2427).

22. Strangely the respondent society has raised a plea that since the engagement of the petitioner is dehors the appointment rules the subsequent disengagement was legal. Even if he has completed 240 days in the preceding 12 months it cannot claim reinstatement. The aforesaid plea in fact has not been raised in the reply filed by the society. It has been raised by the Managing Director who has appeared a RW1 while appearing as his own witness. However nothing has been produced on record to show as to what were and are the appointment rules governing the society. It is thus sought to be portrayed that since the petitioner was not engaged through employment exchange their initial engagement is bad in the eyes of law.

23. Though this ground was never taken by the respondents in their pleadings and as such the petitioner could not have been taken unaware that is without affording opportunity to the petitioner to explain the circumstances. But the fact remains that the respondents have even miserably failed to place on record the rules governing appointments in the society and as such the bald statement of RW1 cannot be believed that the appointment itself was dehors the rules. Even otherwise the appointment of the petitioner was on daily wage basis. It has been made after the concurrence of the board of directors. The initial engagement, thus, also cannot be said to be in violation of any rule as none but the board of directors had agreed to the appointment of the petitioner.

24. The ld. counsel for the respondents to buttress his contention that because of the illegal appointment of the petitioner the protection of the provisions of Section 25-F cannot be granted to the petitioner has placed reliance on a judgments of the Hon'ble Punjab and Haryana High Court titled as Chief Engineer, RSD, Irrigation Works and Anr. vs. Suresh Kumar (2009 (1) SCT 163) and Divisional Forest Officer vs. Mangat Ram & Anr. (2009 (1) SCT 62), a judgment of Hon'ble Supreme Court titled as Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh and Ors. (2007) 2 SCC (L&S) 441 and Accounts Officer (A&I) APSRTC and Ors. vs. K.V. Ramana & Ors. (2007 (3) SLR 440). Since the respondents have failed to prove that the appointment of the petitioner was against the recruitment rules of the respondents society the ratio laid by the Hon'ble Punjab and Haryana High Court in Suresh Kumar and Mangat Ram's case discussed hereinabove supra do not come to the rescue of the respondent.

25. The ratio of the K.V. Ramana and Dan Bahadur Singh's case also does not apply to the facts and circumstances of the present case as admittedly by now it is well settled that long working period cannot be regularized dehors the rules. The present case does not pertain to regularization, and in any case regularization if any has to be subject to the availability of post and policy thereupon in respect of regularization. Per se the petitioner cannot claim for regularization even after having put in long and uninterrupted service with the respondents. Nonetheless the aforesaid ratio does not apply to the facts and circumstances of the present case. For all the reasons discussed above it is to be held that the petitioner was not appointed for seasonal work and that too intermittently. The respondent in fact had been giving fictional breaks to the petitioner after every 89 days to frustrate the provisions of Section 25-F of the Act, though they continued employing the petitioner uninterruptedly from 1.8.1995 till 22.4.1999. In view of the matter it cannot further also said that the termination of the petitioner was protected by the provisions of Section 2(oo) of the Industrial Disputes Act. All the three issues are decided in favour of the petitioner and against the respondents.

ISSUE No. 1

26. Now reverting back to the core issue as to whether the termination of the petitioner by the respondent no.1 was unlawful or not, suffice it to say that for the reasons recorded in relation to the issues no.2,3 and 4, discussed hereinabove supra it is clear that the petitioner has completed more than 240 days in the preceding 12 months of his termination. The discussion held hereinabove points to only this conclusion. The documentary evidence on record more particularly Ex. PA-1 further falsifies the claim of the respondent and provides support to the case set up by the petitioner.

27. The case set up by the petitioner is further fortified by Ex. PA-3 to Ex.PA-6 whereby the petitioner and the other workmen had raised a demand charter before the respondents and which apparently led to the termination of the petitioner. The said fact is very candidly and categorically admitted by the Managing Director of the respondent society while appearing as RW1. In his cross-examination he has admitted that the petitioner and other workmen had formed a workers union and offended by the same their services have been dispensed with by the society. Even if that were so the respondent society was under a legal obligation to have atleast resorted to the provisions of Section 25-F of the Industrial Disputes Act and thereupon disengage the services of the petitioner. No such steps were taken by the respondent society. The petitioner having worked uninterruptedly from 1.8.1995 till 22.4.1999 and having completed more than 240 days immediately preceding 12 months of his termination was entitled to the protection of the Act. Not only this, the respondent has even otherwise flagrantly violating the provisions of the Industrial Disputes Act by offering appointment to the petitioner for 89 days and thereupon giving him fictional breaks to merely deprive him of his legal rights envisaged under the Industrial Disputes Act. It was nothing but an act of unfair labour practice. Apparently and as has been categorically admitted by the Managing Director the petitioner and the other workmen had been shown the door for having raised an union and a demand under the provisions of the Industrial Disputes Act. The termination of the petitioner thus cannot be sustained in any manner. Consequently the termination of the petitioner is held to be illegal. It is set aside and quashed. The respondent is directed to reengage the petitioner at the same place and post forthwith. The petitioner shall be entitled to continuity and seniority in service from the date of his illegal termination.

28. Though the petitioner has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness but seeing to the financial health of the society, as is reflected per Ex. RW1/B and Ex. RW1/C it seems to be dismal. I do not think it just and proper to award back wages to the petitioner. Nonetheless seeing to the fact that the respondents had flagrantly violated the provisions of the Industrial Disputes Act and had been rather trying to defeat the provisions of the Act as has been discussed hereinabove it is ordered that the respondent shall pay an amount of Rs.25,000/- to the petitioner as lump sum compensation in lieu of the back wages. The issue decided accordingly.

RELIEF

29. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. He is entitled to continuity and

seniority in service from the date of his illegal termination. The petitioner is also entitled to Rs.25,000/- as lump sum compensation in lieu of back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 29th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 34/2006
Date of Institution : 20.3.2006
Date of decision : 12.1.2011

Shri Amru Ram S/o Shri Khima Ram, R/o VPO Kummi, Tehsil Sadar, District Mandi, H.P. ….*Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Suket at Sundernagar, District Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bimal Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Sh. Amru Ram S/o Shri Khima Ram workman by the Divisional Forest Officer Suket, Forest Division, Sundernagar w.e.f.26.4.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In pursuance to the reference the petitioner has averred in the statement of claim that he was engaged as a beldar on 1.11.1997. He worked as such till 25.4.2002 and eventually his services were terminated on 26.4.2002 without any notice. The respondent did not comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. It is also averred by the petitioner that the persons junior to him have been retained by the respondent, which act of the respondent itself is violative of the provisions of Section 25-G of the Act. That permanent work is available with the respondent and the services of the petitioner have been disengaged arbitrarily.

4. The petitioner further contends that he had been re-engaged by virtue of the interim orders passed by the Hon'ble Administrative Tribunal and after the dismissal of his O.A. his services have been terminated in May, 2002. Thereupon he had raised the present dispute. The petitioner thus claims reengagement with all consequential benefits.

5. The respondents while contesting the claim have averred that the petitioner was engaged as a causal labourer. The petitioner was a seasonal worker and that too keeping in view the availability of funds. The petitioner continued working intermittently till April, 2002. The respondents have annexed the mandays chart of the petitioner with the reply. It is further averred by the respondents that a notice was issued to the petitioner but the same was retuned back by the postal authorities with the remarks that the addressee was not available at home. Per the respondents the petitioner had not completed 240 days in each calendar year except the year 2001. It is denied that the respondent had engaged persons junior to the petitioner. It is further averred that the petitioner had left job on his own whereas the other persons had been continued working subject to availability of work and funds. The respondents thus pray for the dismissal of the claim.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 29.2.2008 the following issues came to be framed by my ld. predecessor:

1. Whether the disengagement from the service of the claimant by the respondent is proper and justified? OPP
2. If the above issue is proved in affirmative to what relief of service benefit the claimant is entitled to the respondent? OPP
3. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No
Issue No. 2 : As per operative part of the award Relief. :Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

9. Both the issues are being taken up together for discussion as they are co-related and intermingled.

10. The case set up by the respondents is that the petitioner was a seasonal worker and had rather left the job of his own. It is further their case that the petitioner had been not completed 240 days except the year 2001.

11. The respondents have placed on record the mandays chart of the petitioner vide Ex. RW1/A. A bare glance at the mandays show that the petitioner had completed 240 days in the preceding 12 months of his termination. The plea of a seasonal worker thus is exfacie falsified by the mandays of the respondents themselves. The petitioner thus was indeed entitled to a notice as envisaged under Section 25-F of the Act. The respondents have placed on record a notice purportedly having been sent to the petitioner regarding his disengagement vide Ex. RW1/B. The said notice infact was issued somewhere on 20.12.2000. Admittedly the services of the petitioner were disengaged in April, 2002. The notice Ex. RW1/B is thus of no consequence.

12. The respondents have further canvassed that the petitioner had left the job of his own sweet will. By now it is well settled that the question of abandonment has to be proved on record, seeing to the facts and circumstances of each individual case. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent.

13. The respondents have failed to place on record any evidence to remotely show that the petitioner had actually abandoned job. Tacitly the respondents have admitted that the juniors are still continuing with them, for it is averred by the respondents that that the petitioner had left the job of his own whereas other workmen continued as per availability of work and funds. The plea of work being seasonal in nature having already been negated by their own documents placed on record and there being no evidence that the petitioner had abandoned job it is more than certain that the services of the petitioner were disengaged by the respondents. There is no evidence on record that the respondents had taken recourse to the statutory provisions of the Section 25-F and as such the termination of the petitioner is illegal and arbitrary. Not only this, the respondents have also failed to abide by the provisions of Section 25-G of the Act. The disengagement of the petitioner is thus held to be illegal. It is neither proper nor justified.

14. Consequently while allowing the reference the respondents are directed to re-engage the petitioner forthwith. Seeing to the peculiar circumstances of the case and more particularly keeping in view the fact that the petitioner had been re-engaged in pursuance to the interim orders passed by the Ld. Administrative Tribunal and he continued working as such for some time I do not deem it just and proper to award back wages to the petitioner. The petitioner shall however be entitled to seniority and continuity in service from the date of his illegal termination. Both the issues are accordingly decided in favour of the petitioner.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity in service and seniority from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent

to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 12th day of January, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 450/2009
Date of Institution : 28.8.2009
Date of decision : 26.11.2010

Shri Balam Ram S/o Shri Sunder Singh, R/o Village Hawani, P.O. Ropadi, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Balam Ram S/o Shri Sunder Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on November, 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
> (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
> (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
>
> (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
> (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
>
> (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on

which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on November, 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest

Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.10008, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2009-Mandi dated August 10, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs. 50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 8/2010
Date of Institution : 16.1.2010
Date of decision : 2.11.2010

Shri Baldev Raj S/o Shri Rattan Chand, V&PO Raipur Sahora, Tehsil & Distt. Una, H.P. ….*Petitioner.*

Versus

Managing Director, M/s. Mayfair Biotech Pvt. Ltd. Industrial Area Mehatpur, Distt. Una, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR.
For the Respondent : Respondent exparte.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Sh. Baldev Raj S/o Shri Rattan Chand by the management of M/s Mayfair Biotech Pvt. Ltd. Industrial Area Mehatpur, Distt. Una, H.P. w.e.f. 23.2.2008 on the basis of alleged theft is legal and justified? If not, what relief of service benefits the above workman is entitled to?"

2. The short and simple case set up by the petitioner in furtherance to the reference is that he was appointed by the respondent management as a helper in the year 2005 and he continuously worked as such till 22.2.2008 withy any break. On 23.2.2008 his services were dispensed with verbally and without issuing any show cause notice or charge sheet. His termination was thus violative of the principles Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred by the petitioner that while dispensing his services the management has not complied with the basic principle of 'last come first go', as persons junior to him namely one Tara Chand S/o Shri Paras Ram, Amit Kumar S/o Shri Ram Kumar, Darshan Singh S/o Shri Mehar Singh and one Satpal had still been retained by the respondent. So much so, the respondent had appointed a fresh hand namely Dhyan Singh after the termination of the petitioner. The action of the respondents thus was also violative of the provisions of Section 25-G and 25-H of the Act.

3. The respondent had lodged a false FIR against the petitioner after his termination with the sole objective of victimizing the petitioner and that too without any specific proof regarding theft. The said act of the respondent was also an unfair labour practice.

4. The petitioner thus seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages, seniority and all other consequential benefits.

5. The respondent had been duly served for 1.6.2010 but none has put in appearance on his behalf. The respondent for reasons best known to him chose not to contest the reference. The respondent was thus set-exparte.

6. The petitioner in order to substantiate his contentions in the statement of claim appeared as his own witness as PW1. He reiterated the averments made in the statement of claim. The testimony of the petitioner goes to show that he worked continuously with the respondent management from 2005 till his termination on 22.2.2008. As per the petitioner he had worked uninterruptedly with the respondents during the said interregnum. It is also deposed by the petitioner that the respondents have retained persons junior to him namely Tara Chand, Amit Kumar, Darshan Singh and Satpal. Further per him one Dhyan Singh has been appointed by the respondent after his termination. The petitioner was never offered any opportunity for reemployment. Some FIR is stated to have been filed against the petitioner after 8.3.2008 i.e. after he has raised an industrial dispute by approaching the Labour and Conciliation Officer through a demand notice.

7. Nothing to the contrary has been proved and pleaded by the respondent management. It is thus to be inferred that the respondent has violated the mandatory provisions of Section 25-F, 25-G and 25-H of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

8. Consequently the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not a gainfully employed during his forced idleness. The petitioner is thus held entitled to 50% back wages from the date of his illegal termination on 23.2.2008 till his reinstatement. The petitioner shall also be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 2nd day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 638/2008
Date of Institution : 29.10.2008
Date of decision : 26.11.2010

Shri Bali Ram S/o Shri Bhagat Ram, R/o Village Kalswayi, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

> **"Whether retrenchment of services of Shri Bali Ram S/o Shri Bhagat Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"**

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent in the year 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section

> 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per

working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
> (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
> (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
> (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
> (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
> (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
>
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
>
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
>
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
>
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
>
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
>
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the

Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposit to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the

relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No. 9244, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy. D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs. 50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 80/2005
Date of Institution : 18.6.2005
Date of decision : 29.11.2010

Shri Bhumi Singh S/o Shri Puran Singh, R/o Vill & P.O. Gharoh, Tehsil Dharamshala, Distt. Kangra, H.P.
….Petitioner.

Versus

Shri Nirvan Singh Gill, Owner, White Heaven Tea Estate, Dharamshala, Distt. Kangra, H.P. *….Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Sharma, Adv.
For the Respondents : Sh. V.K. Gupta, AR.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Bhumi Singh S/o Shri Puran Singh workman by Shri Nirvan Singh Gill, Owner, White Heaven Tea Estate, Dharamshala, Distt. Kangra, H.P. w.e.f. 14.6.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of consequential service benefits including reinstatement, seniority, backwages and amount of compensation the above aggrieved workman is entitled to?"

2. In pursuance to the reference the petitioner has averred in the statement of claim that he was employed as a Clerk on regular basis by the respondent on 25.3.1998 in his White Heaven Tea Estate at Dharamshala on a monthly wage of Rs.3500/- which was later on enhanced from time to time and at the time of his oral termination on 14.6.2003 his salary was Rs.4000/- per month.

3. It is the case of the petitioner that his services were terminated illegally on 14.6.2003, without following the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). His termination was oral. The respondent had never issued an appointment letter to the petitioner. The act of the respondent was in derogation to the provisions of the Industrial Disputes Act and his termination was an act of "hire and fire".

4. The respondent tea Estate was still working and had even engaged workers afresh without afforded opportunity to the petitioner fro reengagement.

5. The petitioner thus claimed reengagement with all consequential benefits including full back wages.

6. The respondent while contesting the claim raised the preliminary objections that the establishment of White Heaven Tea Estate, Dharamshala had been licensed for 20 years to M/s. Surya Trading Company on 10.10.1997 under a licence agreement and the tea garden along with the entire staff thereupon was handed over to M/s. Surya Trading Company which was solely managing the affairs of he tea estate. The petitioner also denied the relationship of an employer and an employee between the two. The order of reference by the appropriate Govt. was beyond jurisdiction and there was no relationship of a master and a servant between the parties.

7. On merits it was denied that the petitioner was ever employed in the tea Estate.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. I notice that on 23.8.2008 the following issues had come to be framed by my ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits the petitioner is entitled to? OPP
2. Whether the petitioner was not employee in the respondent's concerned namely White Heaven Tea Estate Dharamshala. OPR
3. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No
Issue No. 2 : Yes
Relief : Dismissed as per the operative part of the award

REASONS FOR FINDINGS

ISSUE No. 2

11. The primary question which require to be answered at the very threshold is whether the petitioner was employeed in the White Heave Tea Estate, Dharamshala by the respondent or not.

12. The petitioner claims that he was appointed as a clerk on a regular basis on 25.3.1998 in the Tea Estate. On the other hand it is the case of the respondent that the Estate Had been handed over to M/s. Surya Trading Company on the basis of a licence deed on 10.10.1997. The Licence Deed has been placed on record as Mark A by RW1 Sh. S.S. Sidhu the GPA of the respondent. The original licence deed was also produced in the Court at the time of final arguments. The list of staff and labour which was handed over at the time of licence is also annexed along with.

13. The petitioner in furtherance of his plea has deposed that he was appointed on regular basis as a clerk in March, 1998 by the respondent in the White Heave Tea Estate, Dharamshala. But in his affidavit itself the petitioner has also tried to portray that he was working for the respondent at his house and was also supervising the work of two chowkidars engaged in his residence at Dharamshala. He has himself admitted in his cross-examination that all the employee of White Heave Tea Estate were covered under the Employees Provident Fund Scheme, but he was not covered by the said scheme. He has further admitted that his name does not figure in the attendance register or the pay register maintained from October, 1997 till November, 2002 nor are the said registers prepared in his hands.

14. The petitioner has further examined one Teg Bahadur as PW2. As per him he was working as a Chowkidar under the supervision and control of the White Heave Tea Estate from 1984 to 2004. As per this witness Bhumi Singh (petitioner) had been employed on regular basis as a clerk in March, 1998 by Sh. Nirvan Singh Gill in his presence. The petitioner has been assigned the duties of a clerk. The petitioner had worked under the control and supervision of the respondent for more than 5 years on regular basis without any complaint from any quarter, but his services were terminated illegally in the month of June, 2003. This witness however has admitted that he was himself covered under the EPF Scheme and used to sign the wage register, as was done by the other workmen of the Estate. He has also admitted that he has worked in the M/s. Surya Trading Company and one Mr. Gaur and his clerk used to disburse the wages. He had worked for 5 years with the M/s. Surya Trading Company and he was retained as a Chowkidar.

15. The respondents on the other hand have examined one Sh. S. S. Sidhu, GPA of respondent Mr. Nirvan Singh Gill who has appeared as RW1. Per this witness he has working as a Manager of the Tea Estate since January, 2000. The tea estate had been given on licence to M/s. Surya Trading Company of Calcutta vide licence deed dated 10.10.1997 along with the tea garden, building and entire staff and the workers listed in the schedule annexed along with the licence deed. This fact was also brought to the notice of the Labour Officer Dharamshala vide letter dated 10.3.1997 vide mark D. Respondent Sh. Nirvan Singh Gill has a residential house in Chilgari, Dharamshala which remained vacant most of the time and as such he had engaged some watchman, mali and the petitioner Bhumi Singh who was incharge of those employees. The petitioner had never been employed in the tea estate. He had been employed by Shri Nirvan Singh Gill to look after his residential premises, deposit of telephone, electricity bills etc. and to do other miscellaneous work. The petitioner had never been employed in the Industrial Establishment, which was otherwise covered under the provisions of the employees Provident Fund and Miscellaneous Provisions Act, 1952. The witness had also brought the wages register of the Estate.

16. The respondent thus claim that the petitioner in fact had been employed in the capacity of a domestic/household incharge and was never on the rolls of the tea garden. Though specifically it has not been averred in the reply filed by the respondent but the said fact had been conveyed by the respondent to the Labour Officer in August and September, 2003 as is clear from Mark B and Marck C on record. The factum of the petitioner having been the personnel assistant of Sh. Nirvan Singh Gill in fact is also itself decipherable from the deposition of the petitioner himself. Though he had claimed that he was appointed as a clerk on regular basis but the latter part of the deposition shows that he was looking after the household chores of the respondent. To some extent the deposition of PW2 also points in the same direction. Even assuming that the respondent had not issued an appointment letter to the petitioner, if he was working as a clerk his claim would have certainly been reflected in the attendance register and in wage register of the tea Estate. He was liable to be covered under the EPF Scheme also. Even the PW2 was covered under the scheme and while receiving wages used to sign the register but the same is not the case, as far as the petitioner goes. PW2 has in fact worked even with M/s. Surya Trading Company for 5 year this was not even the case, as far as the petitioner goes. I had gone through the wage registers of the Tea Estate minutely during the course of arguments. The name of the petitioner did not figure in any of the registers. Even after March, 1998, the name of 31 workmen mentioned in the schedule annexed along with Mark A i.e. licence deed were noticed. It however did not carry the name of the petitioner. Had the petitioner been on regular basis as is the case of the petitioner if nothing else atleast his name would have been reflected in the salary register of the Tea Estate. But it is not so.

17. Though the petitioner has tried to discharge his initial onus of proving the relationship of a employer and an employee by examining himself and PW2 but the claim of the petitioner has been rebutted by the documents produced by the respondent more particularly the salary and the attendance registers. None carry the name of the petitioner. Had the petitioner been the employee of the Estate his name certainly would have been mentioned in any one of them. As is clear from mark B i.e. Licence Deed the original of which ws produced by the respondent during the course of arguments it transpires that on 10.10.1997 the Estate had been handed over to M/s. Surya Trading Company. The said factum has been admitted by PW2. If that is so the appointment of the petitioner in the year 1998 had to be made by M/s. Surya Trading Company, if it had been for the Estate, as is the case of the respondent. It thus becomes apparent that the petitioner was appointed by the respondent in his personnel capacity or looking after his household activities at Dharamshala.

18. From the entire discussion held hereinabove it is clear that atleast the petitioner was not an employee of the Tea Estate. At best he was the personnel employee of Sh. Nirvan Singh Gill. If that was so, unfortunately the petitioner cannot be held to be a workman as defined under Section 2(s) of the Act. Had he been a workman in the Estate the protection of the Act would have certainly come to his rescue. It has thus to be held that there was no relationship of an employer and an employee in terms of the requirement of the Industrial Disputes Act. The petitioner was not a workman as defined under Section 2(s) of the Act. The issue is decided accordingly in favour of the respondent and against the petitioner.

ISSUE No. 1

19. In view of the findings arrived at in respect of issue no.2 wherein the relationship of an employer and an employee has not been found to be inexistence between the parties in terms of the Industrial Dispute Act. It cannot be said that the termination of the petitioner was against the provisions of the Act. The termination of the petitioner would not entail the protection of the provisions contained therein. The issue is decided accordingly.

RELIEF

20. For all the reasons discussed above the reference is dismissed. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 29th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 618/2008
Date of Institution : 29.10.2008
Date of decision : 26.11.2010

Smt. Bimla Devi W/o Shri Kanshi Ram, R/o Village Bardana, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

> **"Whether retrenchment of services of Smt. Bimla Devi W/o Shri Kanshi Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"**

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent on 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to her namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by her act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/A-1 is ex-facie illegal.

21. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Kumar S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after her retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the

rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer, HPPWD, Dharampur vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9241, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated August 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 447/2009
Date of Institution : 28.8.2009
Date of decision : 26.11.2010

Smt. Brahami Devi W/o Shri Jai Singh, R/o Village Righali, P.O. Dhawali, Tehsil Sarkaghat, Distt. Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Smt. Brahami Devi W/o Shri Jai Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent in 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to her namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by her act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum am ount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per

working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
> (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
> (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
> (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
> (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
> (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/A-1 is ex-facie illegal.

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> (a) he workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
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> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
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> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
>
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
>
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
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> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
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> (ii) two hundred and forty days, in any other case…." 23. The petitioner in paragraph 3 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed in 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

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26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Kumar S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after her retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer, HPPWD, Dharampur vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 854/2007-9988, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2009-Mandi dated August 11, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 114/2007
Date of Institution : 12.9.2007
Date of decision : 23.11.2010

Shri Chet Ram S/o Shri Narain, R/o Village Nishu, P.O. Kamand, Tehsil Sadar, District Mandi, H.P.
…Petitioner.

Versus

Executive Engineer, I&PH Division, Mandi, District Mandi, H.P. *….Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Laxman Thakur, Adv.
For the Respondents : Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Chet Ram S/o Shri Narain workman by the Executive Engineer, I&PH Division, Mandi, H.P. w.e.f. 01.09.2004 without complying the provisions of the

Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In furtherance to the reference the petitioner has averred that he was appointed as beldar on daily wages in the year 1993 at Panarsa Sub Division. He worked as such till August, 2004 with the respondents. He had successfully completed more than 240 days in a calendar year preceding his termination. All of sudden in September, 2004 his services were terminated orally and without assigning any reason. A number of junior persons i.e. Beli Ram and Het Ram were allowed to continue to work with the respondents. The termination of the petitioner is thus stated to be against the statutory provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. The petitioner thus seeks his reinstatement with all consequential benefits.

4. While contesting the claim the respondent raised the preliminary objections vis-à-vis maintainability, non joinder of necessary parties and that since the petitioner had abandoned job of his own so he is not entitled to the protection of the Act.

5. On merits it is not denied that the petitioner did not work with the respondents since 1.3.1993. However, per the respondents the petitioner had worked intermittently. He had never completed 240 days in any calendar years. The petitioner was stated to have been disengaged w.e.f. 1.9.2004 along with the other similar situated persons due to non availability of work. The other juniors namely Bali Ram and Het Ram were stated to be working continuously only after September, 2004 and that too in another Sub Division. It is thus prayed that the claim be dismissed.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 26.12.2008 the following issues had came to be framed by my ld. Predecessor.

1. Whether the termination of service of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? OPP
2. Whether the claim petition is not maintainable on accout of non-joinder of the State Government as party. OPR
3. Whether the petitioner was engaged as casual labourer subject to availability of funds and works. OPR
4. Whether the petitioner had abandoned the job on his own. OPR
5. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : No
Issue No. 3 : No
Issue No. 4 : No
Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1, 3 AND 4

9. All the three issues are taken up together for discussion as they are co□related and intermingled.

10. No doubt as per the mandays of the petitioner placed on record by the respondent vide Ex.RW1/A the petitioner had not completed 240 days in the preceding 12 months of his termination i.e. w.e.f. 1.9.2004 and as such he may not be entitled to the protection of the provisions of Section 25-F of the Act. However the fact remains that one Het Ram S/o Dile Ram was a junior to the petitioner as is clear from Ex.RW1/C, which shows that the said Het Ram was appointed for the first time on 1.7.2003.

11. No doubt as per the mandays of the petitioner he had never completed 240 days in any calendar years from 1993 till 2004 but if it is true even for the said Het Ram who has also not completed the requisite mandays in the year 2003 and 2004. Since Het Ram was junior to the petitioner even while resorting to retrenchment, the respondents had to first terminate the person who had been appointed the last. In that view of the matter Het Ram had to be

retrenched first. It is by now well settled that even a workman who has not completed 240 days in a calendar year he is entitled to the protection of the provisions of Section 25-G i.e. principle of 'last come first go' as has been held by the Hon'ble Supreme Court titled as Central Bank of India vs. S. Satayam, (1996 5 SCC 419). As such even the petitioner was entitled to the protection of the provisions of Section 25-G.

12. The respondents in their preliminary objections have raised a plea that the petitioner had himself abandoned job on 1.9.2004 but while filing reply to the main claim it is averred by the respondents that the services of the petitioner was disengaged w.e.f. 1.9.2004 along with other similar situated persons due to non availability of work. The Executive Engineer Sh. Puran Chand Thakur who has appeared as RW1 has only deposed that the petitioner had himself abandoned job. There is nothing in his deposition to remotely suggest that the services of the petitioner was disengaged by the department on 1.9.2004 due to non availability of work or for non availability of funds. Even qua abandonment there is only a bald statement of the Executive Engineer. No documentary proof has been placed on record to show that the petitioner had abandoned job or thereupon he had been asked to report for duty, failing which his services would be dispensed with. The Executive Engineer has further admitted that Het Ram S/o Dile Ram had been appointed for the first time in July, 2003 and one Nihal Singh S/o Shri Mangat Ram was appointed in January, 1996 and both of them have since been regularized. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent.

13. It is thus apparent from record that the respondents have not followed the mandatory provisions of Section 25-G of the Act while disengaging the services of the petitioner. The plea of abandonment has not been proved by the respondents as such it is to be held that the termination of the petitioner was illegal. Consequently the petitioner is ordered to be reengaged. However seeing to the totality of circumstances including mandays of the petitioner it is further ordered that the petitioner shall be entitled to seniority and continuity of service only from the date of his illegal termination. In the peculiar circumstances of the case the petitioner shall not be entitled to back wages. The issues are decided accordingly.

ISSUE No. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable on account of non-joinder of the party. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

15. For all the foregoing reasons discussed the reference is allowed. The petitioner is ordered to be reinstated forthwith along with seniority and continuity in service from the date of his illegal termination, though except back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 23rd day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 100/2009
Date of Institution : 26.2.2009
Date of decision : 26.11.2010

Shri Chhotu Ram S/o Shri Mansa Ram, R/o Village Nengal, P.O. Sandhole, Distt. Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A
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AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Chhotu Ram S/o Shri Mansa Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on July, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non□plan expenditure.

Thus, to avoid financial hardship to the department action had been initiated under Section 25□N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub□section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges

from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
>
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on July, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/05 & 712/07, dated 8.12.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 15, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/ as lump sum amount in lieu of back wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 183/2009
Date of Institution : 27.2.2009
Date of decision : 26.11.2010

Shri Daler Khan S/o Shri Sukerdeen, R/o Village Bhadyar, P.O. Brang, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Daler Khan S/o Shri Sukerdeen by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on October, 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram,

Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : No.

Issue 3 : No

Issue 4 : No
Issue 5 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
>
> (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(2) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(3) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(4) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on October, 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount

of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1135/07-339, dated 21.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 29, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back□wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 443/2009
Date of Institution : 28.8.2009
Date of decision : 26.11.2010

Shri Daulat Ram S/o Shri Relu Ram, R/o Village Kaunsal, P.O. Hayun Paid, Tehsil Sarkaghat, District Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

> **"Whether retrenchment of services of Shri Daulat Ram S/o Shri Relu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"**

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on January, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the

Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof
(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
(ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
>
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
>
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
>
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
>
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
>
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
>
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on January, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non□application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs. 50,000/- in lump sum in lieu of back□wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour

Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer cum Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No. LO/MZ/IV/ID/154/06 & 816/2007-10032, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2009-Mandi dated August 11, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 482/2008
Date of Institution : 14.7.2008
Date of decision : 26.11.2010

Shri Desh Raj S/o Shri Sunku Ram, R/o village & P.O. Sandhole, Tehsil Sarkaghat, District Mandi, H.P.
....Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Desh Raj S/o Shri Sunku Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on January, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub□section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-
(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
>
> (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
>
> (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
>
> (2) An application for permission under sub□section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
>
> (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
>
> (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex□facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay□off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-
(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on January, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008

(Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2046, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated May 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy. D. A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-

wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P. (CAMP AT MANDI)

Ref No. : 32/2006
Date of Institution : 20.3.2006
Date of decision : 9.12.2010

Shri Devi Singh S/o Shri Tegu Ram, R/o Village Kothi, P.O. Kharihar, Tehsil Joginder Nagar, District Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPSEB, (E) Division, Joginder Nagar, District, Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K. S. Guleria, Adv.
For the Respondent : Sh. J. S. Chauhan, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> **"Whether the termination of services of Shri Devi Singh S/o Shri Tegu Ram workman by the Executive Engineer, HPSEB (E) Division, Joginder Nagar, District Mandi, H.P. w.e.f. 25.1.98 without complying the provisions of the Industrial Disputes Act, 1947 and Rule 14(2) of the Certified Standing Orders of the Board is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?"**

2. The petitioner has averred in the statement of claim that he was engaged as a daily wager by the respondent on muster roll basis as a beldar on 25.1.1997. His services were terminated illegally on 25.1.1998 without complying with the provisions of the Industrial Disputes Act and Rule 14 (2) of the Certified Standing Orders, adopted by the Board.

3. The respondent board had sufficient work, however, the Board was still giving artificial breaks to the petitioner and his verbal disengagement on 25.1.1998 was illegal.

4. It is further averred by the petitioner that the respondents have retained many junior persons namely Molak Ram, Om Chand, Dalip Singh, Damodar Dass and Vijay Kumar etc. and allowed them to complete 240 days, whereas the petitioner was illegally terminated without complying the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is also the case of the petitioner that while appointing fresh hands the petitioner had not been afforded opportunity of reengagement. Immediately after his termination the petitioner had approached the Hon'ble Administrative Tribunal vide O.A. (M) No.469/99 and the same was dismissed on the grounds of jurisdiction.

5. The petitioner thus prays that his termination be set aside and quashed and the respondent be directed to reengage him with all consequential benefits.

6. The respondents while contesting the claim had raised the preliminary objections vis□à□vis maintainability, estoppel, limitation and the claim being bad for non joinder and misjoinder of necessary parties.

7. On merits the respondents have averred that the petitioner was engaged for a specific period as a casual worker w.e.f. 25.5.1997 and remained deployed as such upto 24.1.1998 and thereafter he left the job at his own without seeking the prior permission of his superior.

8. It is further averred by the respondent that even when the petitioner was initially engaged as a daily waged beldar w.e.f. 25.2.1997 and remained deployed as such upto 24.1.1998 but he had left the job at his own accord i.e. w.e.f. 26.2.1997 (date wrongly mentioned). However, the petitioner had never approached the replying respondent for his reengagement. The respondent thus prayed for the dismissal of the reference.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. I notice that on 25.7.2008 the following issues came to be framed by my Ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? OPP
2. Whether the petitioner's services were never terminated by the respondent, but he left the job on his own. OPR
3. Whether the petitioner is estopped from filing of the claim petition of his act and conduct. OPR
4. Whether the claim petition suffers from the vice of delay and laches. OPR
5. Whether the claim petition is bad and not maintainable as alleged. OPR
6. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes, having violative of Section 25-G of the Act.
Issue No. 2 : No
Issue No. 3 : No
Issue No. 4 : No
Issue No. 5 : No
Relief. : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

12. Both the issues are being taken up together for discussion as they are co□related and intermingled.

13. Admittedly the petitioner had started working with the respondent from 25.7.1997. He is said to have worked with the respondent upto 24.1.1998. Apparently till that date as per the mandays annexed with the reply by the respondent vide Ex. RW1/A the petitioner had not completed 240 days. The petitioner however claims that his services were dispensed with illegally on 24.1.1998. However per the respondents the petitioner had been issued muster roll no.354 w.e.f.25.12.1997 to 24.1.1998 and he had abandoned job. Seeing to the factual position discussed above the protection of the provisions of Section 25-F may not have been available to the petitioner.

14. However to prove the fact of abandonment the respondents have neither placed on record the muster roll no.354 nor any other documentary evidence has been placed on record to show that the respondents board had issued a notice to the petitioner for his unexplained absence. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job.

15. The Assistant Engineer, Makrari, who has appeared as RW1 has though submitted that the petitioner had abandoned job on 24.1.1998 and never returned back thereafter. The said witness had joined the Sub Division on 22.7.2008 and even not brought the related record at the time of his deposition. He had also not brought the muster roll no.354 to prove the fact of abandonment.

16. The respondents have admitted in their reply that one Damodar Dass and Om Chand had been working along with the petitioner and but since they had not absented themselves from work and they continued working with the respondent Board. The petitioner after his disengagement had never approached the replying respondent for his

reengagement. In fact the mandate of law is that the employer has to afford opportunity to the workman if fresh hands are employed. It is not for the employee to go after the employer seeking work in such a situation. Since the co-workers were allowed to continue uninterruptedly and the plea of abandonment has not been proved on record, it is apparent that the respondent atleast did not follow the mandate of Section 25-G, which envisages the principle of 'last come first go'. To this limited extent the termination of the petitioner is bad in the eyes of law.

17. Seeing to the delay caused by the petitioner in raising the demand it would be expedient and in the interest of justice that back wages are not ordered to be paid to the petitioner. The petitioner shall be entitled to reinstatement only. Both the issues are decided in the aforesaid terms.

ISSUE No. 4

18. No doubt the petitioner was terminated on 25.1.1998 and the failure report was submitted by the conciliation officer on 26.2.2004 but in the interregnum the petitioner had approached the Hon'ble Administrative Tribunal vide O.A. (M) No.469/1999 which was dismissed for want of jurisdiction. Thereupon the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram case (2007 LHLJ 903). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

> " …….. While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years….."

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

ISSUE No. 5

19. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

20. The rule of estoppel is not attracted in this case. The Ld. counsel appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

21. For all the aforesaid reasons discussed above the reference is allowed. The petitioner is ordered to be re□engaged forthwith. He shall not be entitled to seniority, continuity and back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 9th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 311/2009
Date of Institution : 29.5.2009
Date of decision : 26.11.2010

Shri Dharam Pal S/o Shri Gokal, R/o Village Fihad, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P.
....Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Dharam Pal S/o Shri Gokal by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on December, 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu ofback-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-
(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
>
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
>
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
>
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
>
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
>
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
>
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on December, 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1237 & 1318/07-379, dated 29.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated March 16, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the

redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 466/2004
Date of Institution : 1.10.2004
Date of decision : 23.11.2010

Shri Dinesh Kumar S/o Shri Bhagat Ram Gautam, R/o Village House No.219/2, Purani Mandi, District Mandi, H.P. …*Petitioner.*

Versus

Secretary, Himachal Pradesh Market Committee, District Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Amar Chand, Adv.
For the Respondents : Sh. Shyam Sharma, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

'क्या श्री दिनेश कुमार सपुत्र श्री भगत राम गौतम, दैनिक वेतन भोगी कामगार को सचिव मार्केट कमेटी, मण्डी स्थित धनोटू सुन्दरनगर, जिला मण्डी, हि0 प्र0 द्वारा दिनांक 10–10–2000 से औद्यौगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित व न्याय संगत है यदि नहीं तो कामगार किस राहत एवं क्षतिपूर्ति का पात्र है''

2. In furtherance to the reference the petitioner has averred that he was engaged as a beldar on daily wage basis by the respondent in the month of August, 1997 and he continued to work as such till 10th of October, 2000. On 10th of October the petitioner had proceeded on leave to his home. On way he had met with an accident and the

petitioner could not join his duties for another 20 days. On 24.11.2000 when the petitioner went to resume his duties the respondents refused to take him back. The respondent had manipulated some notice dated 24.10.2000 but the same was never received by the petitioner.

3. The petitioner had preferred an application before the Hon'ble Administrative Tribunal vide O.A. No.187/2001 seeking his reengagement. The Hon'ble Tribunal had vide its order dated 18.5.2004 directed the respondents to consider his case for reengagement.

4. It is thus prayed that the petitioner be reengaged w.e.f. 10th of October, 2000 along with all consequential benefits.

5. While contesting the claim the respondents admitted that the petitioner was engaged in August, 1997. It is however the case of the respondent that the petitioner worked with the respondent till 31.9.2000, where after the petitioner left the job of his own without any intimation to the respondents. It is further averred that the father of the petitioner, who was also an employee of the board and was posted as Auction Recorder in the market centre at Dhanotu. The petitioner too was working under his supervision at the relevant time. The father of the petitioner used to get the petitioner marked presence along with other beldars. Both the petitioner and his father were indulging in misappropriation of public funds. They had tempered with the official record by incorporating cuttings therein. In this behalf an explanation had been called by the Board from the petitioner and his father. The petitioner sensing some stern action had left the job without intimating the department in order to avoid legal penal action by the department. The petitioner had remained absent after 31.9.2000. However, his father was getting the petitioner marked present till 10.10.2000.

6. It is further averred by the respondents that the original application preferred by the petitioner before the Hon'ble Tribunal had been dismissed on merits after considering the facts and circumstances and as such the petitioner was estopped from agitating the claim again. It is thus prayed that the claim be dismissed.

7. The petitioner had not filed any rejoinder. I notice that on 8.10.2005 the following issues had came to be framed by my ld. Predecessor:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 10.10.2000 in violation of the provisions of Industrial Disputes Act, 1947 in an illegal and unjustified manner? OPP
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the petitioner left the job at his own without any intimation to the department if so its effect? OPR
4. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 :	Redundant
Issue No.2 :	Redundant
Issue No.3 :	Redundant
Relief :	Dismissed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1, 2 AND 3

9. All the three issues are taken up together for discussion as they are co-related and intermingled.

10. Though the respondents have categorically raised the plea of estoppel, in view of the earlier adjudication of the lis vide O.A. No. (M) 187/2001 decided by the Hon'ble Administrative Tribunal on 18.5.2004, no specific issue has been framed in this behalf. It is however apposite to first and foremost delve on the issue of estoppels itself.

11. Though the petitioner claim that the orders had been passed by the Hon'ble Tribunal as it had no jurisdiction to pass the reengagement order and as such no consideration has been done in the case an that the respondents have been directed to consider the case of the petitioner in accordance with his seniority. The respondents have placed on record a copy of the order dated 18.5.2004 vide Ex.RW1/C. A reading of the order shows that the petitioner had assailed his disengagement w.e.f. 10.10.2000. The petitioner had sought the following relief from the Hon'ble Tribunal:

"(1) the respondents may kindly be directed to reengage the applicant at the same place and in the same capacity;
(2) the respondents be also directed to give the old seniority to the applicant."

12. It is more than apparent from the order that the Hon'ble Tribunal had passed the said order on merits. The plea of the parties was considered. The grounds espoused by both the parties were bye and large the same and the plea of abandonment set up by the respondent was upheld by the Hon'ble Tribunal and on fact it was held that the petitioner had failed to make any case andconsequently it was dismissed. While dismissing the original application the respondents were however directed to consider the case of the petitioner as per his seniority.

13. The petitioner once having failed to get relief on the same cause from the Hon'ble Tribunal had the opportunity to assail the said order before the Hon'ble High Court. Rather than doing so the petitioner had preferred raising a dispute again on the same cause before this Court. On the perusal of the record it transpires that the dispute so raised by the petitioner had been referred to the appropriate Govt. by the Labour-cum-Conciliation Officer on 22.7.2003. It is thus manifestly clear that the petitioner had already filed the original application in the year 2001 and the same came to be disposed off on 18.5.2004. Having failed to get the relief from the Hon'ble Tribunal the petitioner also filed a claim thereupon.

14. For all the reasons discussed above it is apparent that the petitioner could not have approached this Court again on the same cause. The petitioner was estopped from filing the present reference after having failed to get appropriate relief on the same cause of action from the other forum. It is not a case that the Tribunal had non-suited the petitioner on the grounds of jurisdiction alone. The matter had been decided on merits and after having failed the petitioner could not be allowed to agitate the matter on the same cause of action again. The findings returned by the Hon'ble Tribunal have since attained finality and the petitioner can not be allowed to reopen the issue at this stage again. The stand taken by the petitioner already stands negated by the Hon'ble Tribunal as such it cannot be said that the termination of the petitioner was in violation of the Industrial Disputes Act. It has already been held to be contrary by the Hon'ble Tribunal and as such the petitioner is estopped to raise the issue again before this Court.

15. For all the reasons discussed above the issued framed hereinabove are held against the petitioner. Consequently the reference is dismissed.

RELIEF

16. For all the reasons discussed above the reference is dismissed. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 23rd day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 68/2007
Date of Institution : 2.6.2007
Date of decision : 29.11.2010

Shri Duggal Ram S/o Shri Dharam Chand, R/o Village Bahnu, P.O. Jagat Sukh, District Kullu, H.P.
....Petitioner.

Versus

1. The Managing Director, M/s. Lahoul Potato Growers Co-operative Marketting-cum-Processing Society Ltd. Manali, District Kullu, H.P.

2. The Registrar, Co-operative Societies, Government of H.P. Shimla, H.P. *....Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondents : Sh. R.L. Kaith, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the action of the (1) Managing Director, M/s. Lahoul Potato Growers Co-operative Marketting-cum-Processing Society Ltd. Manali, District Kullu, H.P. (2) The Registrar, Cooperative Societies, Government of H.P. Shimla-9 to give break in service to Shri Duggal Ram S/o Shri Dharam Chand workman during his service period time and again and finally terminated w.e.f.20.6.1999 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In furtherance to the reference, the case set out by the petitioner in brief is that he was engaged as a daily waged workman on muster roll basis on 26.7.1993.

3. The employer society was indulging in unfair labour practices and as a sequel thereto the daily wagers had formed a Union known by the name of L.P.S. Mazdoor Sangh. They had issued a demand notice on 2.6.1999, followed by a reminder on 13.7.1999. During the pendency of the said demand the services of the petitioner and other workmen, who were the members of the Union was illegally retrenched, though there was sufficient work available with the respondent.

4. The services of the petitioner was terminated on 20.6.1999 without any notice and compensation, oblivious of the fact that the petitioner had completed more than 240 days in each calendar year.

5. It is also averred by the petitioner that the employer had been giving fictional and illegal breaks to the petitioner without any fault on his part. The respondents even retained persons junior to the petitioner namely Santosh Kumari, Maheshwar Singh, Vikash, Balbir, Ravinder Singh etc. The respondents had also engaged new hands but the petitioner was never offered any opportunity of reengagement.

6. The petitioner thus seeks that his oral termination on 20.6.1999 be set aside and quashed. He may be directed to be reengaged along with back wages and all other consequential benefits.

7. While contesting the claim the respondent No.2 has not filed any reply and nor contested the claim. The respondent society has however raised the preliminary objections that the society having being registered under the H.P. Cooperative Societies Act, 1968 the claim was without jurisdiction and that the petitioner having been appointed for a specified period the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) were not attracted in the present case.

8. On merits it is the case of the respondent society that the work with the society is of a seasonal nature. In order to meet the requirements of the society the workmen are engaged on seasonal basis or a specified period. These workmen are disengaged in accordance with law on the culmination of the potato season. It is further averred by the respondent that the services of the petitioner were not dispensed with a malafide intention or vindictive attitude. It was after the culmination of the potato season that the petitioner was eased out with an assurance that he would be reengaged during the next season. The petitioner was recalled in the next season but he did not join. The workmen were stated to have not been retrenched within the meaning of Section 2(oo).

9. The respondent further averred that the petitioner was always appointed for a specified period and not on regular basis. On culmination of the specified period the services of the petitioner stood automatically terminated and as such the compliance of the provisions of Section 25-F of the Industrial Disputes Act does not arise. The petitioner was engaged intermittently on seasonal basis or specified period of work. It is denied that the petitioner had completed days during the preceding 12 months of his disengagement.

10. As per the respondents the petitioner had been offered due opportunity on opening of the potato season in the year 2000, for a period of 89 days, but, he did not report for duty. Consequently certain workmen namely Santosh Kumari, Maheshwar Singh, Vikash and Balbir had to be reengaged for 89 days. It is thus averred that the petitioner is not entitled to any relief claimed by him.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 6.1.2009 the following issues came to be framed by my ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent 1 is unlawful. If so, what relief of service benefits the petitioner is entitled to? OPP
2. Whether the respondent 1 had been giving fictional breaks in the services of the petitioner without any fault on his (petitioner) part. OPP
3. Whether the work of M/s. Lahaul Potato Grower's Cooperative Marketting-cum-Processing Society Ltd. Manali, Distt. Kullu, H.P. is of seasonal nature and the petitioner was engaged intermittently on the seasonal basis for a specific period. If so, to what effect. OPR
4. Whether the petitioner's removal from service does not fall within mischief of section 2(oo) of the Industrial Disputes Act, 1947. OPR
5. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : Yes
Issue No. 3 : No
Issue No. 4 : No
Relief : Allowed as per operative part part of the award.

REASONS FOR FINDINGS

ISSUES No. 2, 3 AND 4.

14. All the three issues being intermingled and co-related are taken up together for discussion.

15. Before considering the question of termination it would be apposite to first and foremost consider the question of the nature of the engagement i.e. whether the engagement was seasonal or intermittent in nature the breaks given thereupon were fictional or not.

16. The case set up by the petitioner simplicitor is that he was appointed for 89 days and thereupon given fictional breaks. He was however again reemployed for 89 days and the process continued as such w.e.f. 26.7.1993 till 20.6.1999, when his services were eventually disengaged.

17. On the contrary the respondent has portrayed that the work available with them is seasonal in nature. The workman are engaged by the society on seasonal basis for a specified period i.e. during the potato season and thereafter the workmen are disengaged. The petitioner as such had been engaged intermittently on seasonal basis for specified period of 89 days in accordance with the exigency of work.

18. In order to substantiate the plea so raised by the petitioner he has appeared as his own witness, PW1. The petitioner has reiterated the stand taken by him in the statement of claim. He has also further placed on record the appointment letters issued to him for 89 days w.e.f. 26.7.1992 to 24.3.1999 as Ex. PA1 to PA12 and the relieving letter dated 19.6.1999 Ex. PA-25.

19. On the other hand the respondents have examined the Managing Director Sh. Nawang Bodh as RW1 in order to substantiate their contention. The Managing Director of the society who has appeared as RW1 has deposed that during the potato season the society engages need based workmen for a specified period on daily wages every year. Likewise the petitioner had been engaged by the society and his services had come to an end on completion of the specified period of his employment. He was appointed on daily wages without asking for a requisition from the employment exchange. Since the petitioner had not completed 240 days during the preceding 12 months of his termination no notice was required to be served on him. Even assuming the petitioner had completed 240 days even then, he cannot claim reinstatement since the petitioner had been appointed dehors appointment rules i.e. without notifying the vacancy through the employment exchange. The respondent witness has also placed on record one office order dated 24.1.2007 and a resolution of the society dated 17.1.2007 whereby the allowances of the employees of the society have been ordered to be frozen.

20. Though the respondents have taken a categorically stand that the petitioner was appointed for seasonal work and that too during the potato season and that after the specified period the services of the petitioner had automatically come to an end. But it is also not denied by the respondent that the petitioner used to offer appointment for 89 days by issuing office orders. The petitioner has placed on record all the letters whereby he was offered

appointment between 26.7.1993 till 20.6.1999. The same have been placed on record as Ex. PA-1 to PA-12 and PA-25. A bare glance at the documents on record show that the petitioner had been offered appointment uninterruptedly from 26.7.1993 till his termination on 20.6.1999. The letters on record show that except for giving a break of a day or so the petitioner was invariably offered appointment for 89 days continuously. As per the appointment letters on record invariably after about 89 days the petitioner was offered appointment continuously from 26.7.1993 till 20.6.1999. The plea and testimony of the respondents that the petitioner had been engaged only for work in the potato season is thus falsified and belied by their own documents issued to the petitioner. Nothing to the contrary has been proved on record by the respondent. Rather, tacitly the respondent had admitted that the petitioner was appointed for 89 days by way of the appointment letters on record.

21. Not only this the documentary evidence on record as discussed above clearly shows that the petitioner had completed more than 270 days in the 12 months preceding his termination. Thus, even otherwise it cannot be inferred that a person having worked for more than 270 days was a seasonal worker. It is thus clear that even the intention of the respondents themselves was not such as to engage the petitioner for a specified period, as alleged. Apparently it seems to be a ploy to defeat the rights of a workman as envisaged under the provisions of Industrial Disputes Act, more particularly the provisions of Section 25-F thereto. The aforesaid practice of the respondents to employ the petitioner uninterruptedly, but for 89 days each clearly falls within the ambit and scope of unfair labour practice and as such it cannot even be said that the petitioner's removal from service is protected under Section 2(oo) of the Industrial Disputes Act. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled Haryana State Electronics Development Ltd. vs. Mamni (AIR 2006 SC 2427).

22. Strangely the respondent society has raised a plea that since the engagement of the petitioner is dehors the appointment rules the subsequent disengagement was legal. Even if he has completed 240 days in the preceding 12 months it cannot claim reinstatement. The aforesaid plea in fact has not been raised in the reply filed by the society. It has been raised by the Managing Director who has appeared a RW1 while appearing as his own witness. However nothing has been produced on record to show as to what were and are the appointment rules governing the society. It is thus sought to be portrayed that since the petitioner was not engaged through employment exchange their initial engagement is bad in the eyes of law.

23. Though this ground was never taken by the respondents in their pleadings and as such the petitioner could not have been taken unaware that is without affording opportunity to the petitioner to explain the circumstances. But the fact remains that the respondents have even miserably failed to place on record the rules governing appointments in the society and as such the bald statement of RW1 cannot be believed that the appointment itself was dehors the rules. Even otherwise the appointment of the petitioner was on daily wage basis. It has been made after the concurrence of the board of directors though for 89 days, as is clear from Ex. PA1 on record. The initial engagement, thus, also cannot be said to be in violation of any rule as none but the board of directors had agreed to the appointment of the petitioner.

24. The ld. counsel for the respondents to buttress his contention that because of the illegal appointment of the petitioner the protection of the provisions of Section 25-F cannot be granted to the petitioner has placed reliance on a judgments of the Hon'ble Punjab and Haryana High Court titled as Chief Engineer, RSD, Irrigation Works and Anr. vs. Suresh Kumar (2009 (1) SCT 163) and Divisional Forest Officer vs. Mangat Ram & Anr. (2009 (1) SCT 62), a judgment of Hon'ble Supreme Court titled as Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh and Ors. (2007) 2 SCC (L&S) 441 and Accounts Officer (A&I) APSRTC and Ors. vs. K.V. Ramana & Ors. (2007 (3) SLR 440). Since the respondents have failed to prove that the appointment of the petitioner was against the recruitment rules of the respondents society the ratio laid by the Hon'ble Punjab and Haryana High Court in Suresh Kumar and Mangat Ram's case discussed hereinabove supra do not come to the rescue of the respondent.

25. The ratio of the K.V. Ramana and Dan Bahadur Singh's case also does not apply to the facts and circumstances of the present case as admittedly by now it is well settled that long working period cannot be regularized dehors the rules. The present case does not pertain to regularization, and in any case regularization if any has to be subject to the availability of post and policy thereupon in respect of regularization. Per se the petitioner cannot claim for regularization even after having put in long and uninterrupted service with the respondents. Nonetheless the aforesaid ratio does not apply to the facts and circumstances of the present case. For all the reasons discussed above it is to be held that the petitioner was not appointed for seasonal work and that too intermittently. The respondent in fact had been giving fictional breaks to the petitioner after every 89 days to frustrate the provisions of Section 25-F of the Act, though they continued employing the petitioner uninterruptedly from 28.7.1992 till 5.4.1999. In view of the matter it cannot further also said that the termination of the petitioner was protected by the provisions of Section 2(oo) of the Industrial Disputes Act. All the three issues are decided in favour of the petitioner and against the respondents.

ISSUE No. 1

26. Now reverting back to the core issue as to whether the termination of the petitioner by the respondent no.1 was unlawful or not, suffice it to say that for the reasons recorded in relation to the issues no.2,3 and 4, discussed

hereinabove supra it is clear that the petitioner has completed more than 240 days in the preceding 12 months of his termination. The discussion held hereinabove points to only this conclusion. The documentary evidence on record more particularly Ex. PA1 to Ex. PA12 and Ex. PA-25 further falsifies the claim of the respondent and provides support to the case set up by the petitioner.

27. The case set up by the petitioner is further fortified by Ex. PA-13 to Ex. PA-16 whereby the petitioner and the other workmen had raised a demand charter before the respondents and which apparently led to the termination of the petitioner. The said fact is very candidly and categorically admitted by the Managing Director of the respondent society while appearing as RW1. In his cross-examination he has admitted that the petitioner and other workmen had formed a workers union and offended by the same their services have been dispensed with by the society. Even if that were so the respondent society was under a legal obligation to have atleast resorted to the provisions of Section 25-F of the Industrial Disputes Act and thereupon disengage the services of the petitioner. No such steps were taken by the respondent society. The petitioner having worked uninterruptedly from 26.7.1992 till 20.6.1999 and having completed more than 240 days immediately preceding 12 months of his termination was entitled to the protection of the Act. Not only this, the respondent has even otherwise flagrantly violating the provisions of the Industrial Disputes Act by offering appointment to the petitioner for 89 days and thereupon giving him fictional breaks to merely deprive him of his legal rights envisaged under the Industrial Disputes Act. It was nothing but an act of unfair labour practice. Apparently and as has been categorically admitted by the Managing Director the petitioner and the other workmen had been shown the door for having raised an union and a demand under the provisions of the Industrial Disputes Act. The termination of the petitioner thus cannot be sustained in any manner. Consequently the termination of the petitioner is held to be illegal. It is set aside and quashed. The respondent is directed to reengage the petitioner at the same place and post forthwith. The petitioner shall be entitled to continuity and seniority in service from the date of his illegal termination.

28. Though the petitioner has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness but seeing to the financial health of the society, as is reflected per Ex. RW1/B and Ex. RW1/C it seems to be dismal. I do not think it just and proper to award back wages to the petitioner. Nonetheless seeing to the fact that the respondents had flagrantly violated the provisions of the Industrial Disputes Act and had been rather trying to defeat the provisions of the Act as has been discussed hereinabove it is ordered that the respondent shall pay an amount of Rs.25,000/- to the petitioner as lump sum compensation in lieu of the back wages. The issue decided accordingly.

RELIEF

29. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. He is entitled to continuity and seniority in service from the date of his illegal termination. The petitioner is also entitled to Rs.25,000/- as lump sum compensation in lieu of back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 29th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 198/2009
Date of Institution : 27.2.2009
Date of decision : 26.11.2010

Shri Duo Khan S/o Shri Roshan, R/o Village Bhadyar, P.O. Brang, Tehsil Sarkaghat, Distt. Mandi, H.P.
....Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Duo Khan S/o Shri Roshan by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on March, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus,

to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. OPR
6. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : No.
Issue 3 : No
Issue 4 : No
Issue 5 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

13. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

14. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

15. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-
(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

16. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

17. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

18. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

19. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

20. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
> (ii) two hundred and forty days, in any other case…."

22. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

23. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on March, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

25. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had

been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

26. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

27. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 2

29. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1137/07-326, dated 21.1.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 29, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

ISSUE 5

33. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

34. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P. (CAMP AT CHAMBA)

Ref. No. : 183/2001
Instituted on : 20.9.2001
Decided on : 6.1.2011

Shri Gandhi Ram S/o Shri Barfo Ram, R/o VPO Sherpura, Tehsil Dalhousie, Distt. Chamba, H.P.
. . .Petitioner.

Vs

General Manager, Chamera Hydro-Electronic Project, Khairi, Stage□I, Kheri, Distt. Chamba, H.P.
…..Respondent.

Reference under section 10 (1)of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR
For the Respondent : Sh. V.K. Gupta, AR

AWARD

1. By way of the present reference the appropriate government seeks a determination from this court on the following point:

> **"Whether the termination of services of Sh. Gandhi Ram S/o Shri Barfo Ram, w.e.f. 13.4.1998 vide order dated 13.4.1998, by the General Manager, Chamera Hydro Electric Project, Stage-I, Khairi, Distt. Chamba, H.P. is legal and justified? If not, what relief of service benefits, seniority, back-wages and amount of compensation, the above workman is entitled to?"**

2. In furtherance to the reference the petitioner while submitting the statement of claim contends that he was appointed as a beldar Grade-III in the pay scale 1100-1300 by the respondent in terms of the interim orders dated 13.1.1993 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.488/91. In pursuance to the same the petitioner's appointment letter was issued by the respondent and he joined duties on 26.2.1993.

3. Eventually the Writ Petition came to be dismissed as not maintainable and as sequel thereto the interim orders came to be vacated w.e.f. 20.12.1996.

4. The petitioner continued to work even after 20.12.1996 continuously in the same place and post with the respondent. However on 13.4.1998 the services of the petitioner was terminated vide a letter of the even date annexed along with the statement of claim as Annexure-P3.

5. The petitioner thus contends that the action of the respondent in not complying the provisions of Section 25□F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was illegal as neither any notice nor any amount was paid in lieu thereof. For want of notice neither any compensation amount was paid to him.

6. It is further the case of the petitioner that the respondent had appointed number of beldars in work-charge/regular cadre of the project even after the termination of the petitioner but he had not been offered any opportunity of reemployment and as such action of the respondent was also violative of the provisions of Section 25-H of the Act.

7. Furthermore, the petitioner was a land oustee of Chamera Hydro Electronic Project and the management had appointed number of such workmen whose acquired land was less than that of the petitioner. Not only this, there were even such workmen appointed by the management whose land has not been acquired at all as was stated by the Deputy Commissioner Chamba in his affidavit before the Hon'ble High Court of H.P. The petitioner was not employed gainfully after his illegal termination.

8. It was thus sought that the termination of the petitioner be set aside and quashed. He be ordered to be reinstated from the date of his illegal termination with all consequential benefits.

9. While contesting the claim the respondent inter alia raised the preliminary objections that the petitioner had not approached the Court with clean hands and had suppressed the material facts The reference was bad in law for non-joinder of necessary parties and the reference being barred by virtue of orders dated 12.1.1999 passed by the Hon'ble Supreme Court of India. It is further contended by the respondent that the State of H.P. had acquired land for construction/operations and maintenance of the Hydro Project being run by the respondent. That for the purpose of welfare, settlement and rehabilitation of families of the land oustee an understanding had been reached inter se the State and the respondent to employee 700 persons in the project. It was further decided that the persons to be given employment by the respondent was to be identified and sponsored by District Revenue Authority.

10. It is not denied that the petitioner had approached the Hon'ble High Court by way of Writ Petition and by virtue of the interim orders passed by the Hon'ble High Court on 13.1.1993, the petitioner had been engaged by the respondent. The said Writ Petition came to be finally disposed of on 20.12.1996 for want of jurisdiction, with liberty to the parties to approach the Civil Court for the redressal of their grievances.

11. It is further the case of the respondent that they waited for a considerable period, for a notice from the Civil Court and kept the action of disengagement of the petitioner pending so that there would be no contempt of the Hon'ble Civil Court, as it was expected that the petitioner's would approach the Civil Court. When no notices were received by the respondent and on further inquiry it transpired that no petition had been filed, the petitioner was disengaged from service vide letter dated 13.4.1998.

12. The petitioner is thereafter stated to have approached the Hon'ble Supreme Court by way of a SLP which came to be disposed of vide an order dated 12.1.1999 wherein it was ordered that if any of the petitioners secure sponsorship within four weeks from the date of order, they shall be considered for employment by the respondent on priority basis. The petitioner had also filed a Civil Suit in the Court of Ld. Civil Judge, Dalhousie in the month of April, 1999. The reference is thus stated to be illegal and without jurisdiction.

13. That the petitioner and the other workmen were engaged temporarily in compliance with the interim orders of the Hon'ble High Court of H.P. and the disengagement of such persons after the vacation of the interim orders did not cast any obligation on the respondent to comply with the provisions of the Industrial Disputes Act. The petition is further stated to be outside the purview of the provisions of Section 25□H of the Act as they could have been employed only if sponsored by the District Revenue Authority. Since their names had not been sponsored they were not be liable to be engaged.

14. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated the stand taken in the statement of claim.

15. The reference was earlier dismissed by this Court on the grounds of delay. The said award dated 12.1.2006 was set aside and quashed by the Hon'ble High Court vide a judgment dated 5.8.2010 passed in CWP No.1375/2007, titled as Gandhi Ram vs. G.M. Chamera Hydroelectric Project and Ors. The Hon'ble High Court after setting aside the award had directed this Court to answer the reference afresh.

16. On 25.5.2004 my Ld. Predecessor had framed the following issues for determination:

1. Whether the termination of services of the w.e.f. 13.4.1998 by respondent is illegal and unjustified? OPP
2. If the issue No.1 is not proved to what relief of service benefits, seniority, back-wages, amount of compensation, the petitioner is entitled to? OPP
3. Whether the petitioner has concealed material facts, as alleged? OPR
4. Whether the claim petition is not maintainable and bad for non-joinder of necessary parties in view of preliminary objection No.3. OPR
5. Relief.

17. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue-wise findings may be returned thus:-

Issue No. 1 : Yes
Issue No. 2 : Partly yes
Issue No. 3 : No
Issue No. 4 : No
Issue No. 5 : Partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No. 1& 2

18. The respondent has very vociferously urged that the present petition is not maintainable as the appropriate Government in the present case vis-à-vis the respondent is the Central Government. The reference by the State Government is not maintainable in the present forum. In this behalf the respondents even preferred an application for amending the reply, vis-à-vis the Central Govt. being the "appropriate authority" in relation to labour disputes of the NHPC. Since it was a purely legal question the issue is being taken up for discussion at the very inception.

19. The respondent would further contend that in view of a decision titled as Taj Din vs. Chief Engineer Incharge, Dulhasti Hydroelectric Project and Anr, the Ministry of Labour and Employment, Government of India had issued circular whereby the appropriate Government in respect of National Hydroelectric Power Corporation (NHPC) was held to be the Central Government. The respondent has also sought to place reliance on the judgment of the Steel Authority of India Limited and Ors. Vs. National Union Waterfront Workers and Ors. dated 30.8.2001 to buttress their argument that in relation to the NHPC the Central Government is the "appropriate authority".

20. The respondent had further placed on record a copy of the Gazette of India dated 5th of May, 2008 carrying a notification issued by the Ministry of Labour and Employment of the even date reading thus:

> "GSIR.336 (E)- In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of 1947); the Central Government hereby rescinds the notification of the Government of India in the Ministry of Labour published in the Gazette of India, Extraordinary, vide number S.O. 556(E), dated 3rd July, 1998, except as respects things done or omitted to be done before such rescission."

21. The Government of India vide the aforesaid notification has rescinded the earlier notification dated 3rd July, 1998 whereby the State Government had been declared to be the "appropriate Government" in relation to certain Central Public Sector Undertakings and their subsidiaries, corporations and autonomous bodies specified in schedule, which inter alia included theNHPC.

22. It would be apposite to first highlight and mention a few relevant facts at this stage. The Central Government in exercise of powers conferred in it under Section 39 of the Act had notified the State Govt. to be the "appropriate authority" in respect of certain Public Undertakings, Corporations and boards as per the schedule annexed along with vide notification dated 3rd July, 1998, the NHPC was one of them. In the year 2001 the Hon'ble Supreme Court in a judgment titled as Steel Authority of India and Ors vs. National Union Waterfront Worker held that the NHPC was a instrumentality of the Central Government under Article 12 of the Constitution of India. The judgment stopped short of saying that in the said case the appropriate Government would thus be the Central Government.

Despite the aforesaid judgment the Central Government in its wisdom vide letter dated 19th of April, 2002 (Annexure PB filed along with the reply to the application dated 13.9.2007 in respect of maintainability) clarified that in view of the Steel Authority of India's judgment the powers of appropriate Government except under Section 25-L(b) of the Industrial Disputes Act, 1947 will be vested with the State Governments for the CPSU's its subsidiaries/corporations specified from Serial No.1 to 86 in the schedule annexed to the notification dated 3.7.1998. It would be relevant point out that the name of the NHPC figures at serial no. 86th in the schedule. Admittedly thereafter Taj Din case on the basis of which the Ministry of Labour had again issued a circular on 3.5.2007 wherein the Central Government was held to be the appropriate authority. The letter dated 30.5.2007 being merely clarificatory in nature does not effect the statutory provisions of the Act and the notification issued thereupon. However since the earlier notification dated 3rd July, 1998 stands rescinded w.e.f. 5th of May, 2008, the appropriate Government's in respect of NHPC w.e.f. the said date would be the Central Government. Thus only after 5th of May, 2008 the Central Government is the appropriate authority in case of the NHPC.

23. It is by now well settled with the operation of law is prospective unless it is ordered to be retrospective in nature. Till 5th of May, 2008 as is clear from the notification dated 3rd July, 1998 and as per the schedule annexed thereto the power of the appropriate authority had been delegated to the State by the Central Government. The present reference relates to year 2001 and as such the "appropriate Government" in the present case had to be the State Government. It is thus clear that all the references pending and made by the State Government as an "appropriate authority" till 5th May, 2008 are maintainable before this Court. Though any reference thereafter shall not be maintainable as the appropriate authority after 5th of May, 2008 is the Central Government.

24. The respondents have laid much stress on Tajdin's case (discussed hereinabove supra). The respondents have however very conveniently not addressed itself to the legal provision in this behalf, more particularly The Industrial Disputes (Amendment) Bill, 2002 whereby Section 2 of the I.D. Act was substituted likewise:

> "(1) For Clause (a) the following clause shall be substituted namely "appropriate Government" means, the Govt. of the State or Union territory, as the case may be in relation to all the industrial disputes concerning any industry or its unit in whose territorial jurisdiction that industry or its unit is situated".

The bare reading of the provision above shows that after 9th May, 2002, when the aforesaid amendment Act was published in the Gazette the respective state governments have been bestowed the powers of the "appropriate Government" as per there territorial jurisdiction. It is thus clear that in the present case the industrial dispute relates to a unit of the NHPC is the State of H.P., the State Govt. shall be the "appropriate government". The aforesaidamendment was not brought to the notice of the Hon'ble Supreme Court even in the Tajdin's case, which judgment was rendered after the amendment Act, 2002. The issue is decided accordingly.

25. It is admitted that the petitioner had come to be appointed by the respondent by virtue of a interim order dated 13.1.1993 passed by the Hon'ble High Court in CWP No.488/1991. It is also not in dispute that the engagement was subject to the final outcome of the writ petition. It had been categorical made clear to the petitioner as per the appointment letter issued to the workman (EX. RW1/E).

26. The workman came to be engaged by the respondent on 18.2.1993. The said writ petition came to be disposed of on 20th December, 1996. Consequently the interim order also came to be vacated therein.

27. The respondent did not disengage the services of the workman immediately after the vacation of the stay and dismissal of the writ petition. After about one year and four months, on 13.4.1998 the workman were shown the door, though purportedly in view of the dismissal of the writ petition. Strangely it took one year and four months for the respondent to realize that the writ petition had been dismissed.

28. At this stage it would be relevant to reproduce the ground pleaded by the respondent for the said delay. Para 7 of the reply filed by the respondent read thus:-

> "That after the said orders, respondents waited for the considerable period, in wait of the notice from the Civil Court, and kept the action of disengagement of the petitioners pending so that there may not be any sort of contempt of Hon'ble Civil Court as it was expected that the petitioner might have raised a petition before the Hon'ble Civil Court in conformity with Hon'ble High Court orders, but when no notice was received, respondent, of it's own, enquired from the Civil Court, Dalhousie and ultimately after finding that there was no petition, the respondent relieved off the petitioner late Shri Suneet Singh of his engagement vide letter dated 13.4.1998 (Copy Annexure R-4)"

29. No doubt the appointment of the workman was conditional and subject to the final outcome of the writ petition, however having continued the workman for more than one year, the respondent was estopped from resorting

to the dismissal based on the said writ petition. The explanation given and discussed hereinabove also does not seem to be reasonable and prudent. It is seemingly fallacious. No doubt the petitioner could not have claimed equity in the facts and circumstances discussed above but after having been allowed to continue for more than a year and that too in "continuous service" the respondent rather lost the right to disengage the petitioner except after resorting to the provisions of the Industrial Disputes Act.

30. The question thus which arises for consideration is whether the action of the respondent in terminating the services of the workman after one year and four months after the vacation of the stay would amount to retrenchment as per the requirement of the Act or not. The word retrenchment is defined in Section 2 (oo). It read thus:-

> "2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include
> (a) voluntary retirement of the workman; or
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf."

31. Further per the provisions of Section 25-B of the Act "continuous service" has been defined to mean uninterrupted service for a period of one year, during the period of 12 calendar months preceding the date with reference to which calculations is to be made and the days required to be completed in the aforesaid period is 240 days in the present case.

32. Section 25-F further envisages that no workman employed in a industry who has been in "continuous service" for not less than one year under the employer shall be retrenched except as per the provisions enunciated therein.

33. The workman in the present case having completed the "continuous service" for more than one year as per the requirements of Section 25-B. The termination of the workman after more than one year the dismissal of the writ petition thus vested a right to the workman with respect the retrenchment as envisaged in Chapter VB of the Act.

34. Though, the Ld. authorized representative for the petitioner would contend that the engagement of the petitioner being in compliance to the interim orders passed by the Hon'ble High Court at best was adhoc, casual or temporary in nature. In this behalf he placed on judgment of the Hon'ble Supreme Court titled as Vidyavardbhaka Sangha and another vs. Y.D. Deshpande and others (2007) 2 SCC (L&S) 320. I am afraid the ratio of the said judgment would not apply to the facts of the present case as it pertained to appointments for a specified period and on adhoc basis. Admittedly in those circumstances the appointment comes to an end by efflux of time and the person holding such post has no right to continue any further. In the instant case not doubt it was a conditional appointment, but it still could not be termed as adhoc or a casual engagement. After vacation of the interim orders and dismissal of the writ petition the respondent continued with the services of the workman regularly for almost one year and four months. It is thus inferable that the respondent had sufficient work in the said interregnum. If nothing else, the uninterrupted and continuous engagement of the petitioner for more than one year, not only gave them a vested right as per the provisions of the Act but also estopped the respondent from taking any contrary stand. It is not the case that the respondent had approached the Hon'ble Supreme Court. It is rather the workmen who had filed the SLP. There was no stay granted by any court and as such the continuance of the workman for such a long time cannot be said to be a adhoc or a specified appointment for a particular period. More strange is the ground espoused by the respondent in their reply to the statement of claim. Fearing contempt proceedings of a order which never came to be passed the respondent kept on waiting for a notice from the Civil Court. It is strange to believe. The corporation as the NHPC cannot be believed to have waited for some years for the Civil Court to pass same stay orders to order the termination of the workman.

35. It is no doubt true that initially the workman might have accepted employment conditionally. At that point of time it may not be engagement in the real sense of the term. However, after having continued for more than one year and that too continuously as is required under Section 25-B of the Act it ceased to be conditional. It thereafter cast an obligation on the respondent that henceforth the services of the workmen were to be dispensed with as per the procedure established by law. I say so because the engagement of the workman in the present case is not governed by article 309 of the Constitution of India. The engagement of this nature is neither governed by recruitment and promotion rules framed under the Constitutional mandate. It is an engagement on daily wages. Once a workman complete a minimum of 240 days in one year as per the mandate of the Act certain rights come to be vested in him. He can thus be presumed to have come to believe that henceforth his termination would be as per the procedure established by law. That admittedly was not done in the present case. The termination of the workman thus has to be termed illegal. It cannot be sustained in any manner.

36. It is an admitted fact as discussed above that the workman in the present case had come to be initially employed by virtue of interim orders passed by the Hon'ble High Court. Had the respondent not allowed the workman to complete more than one year, the service of the workmen would have come to an end by virtue of the interim orders.

37. Another features which startlingly comes to the fore is that the Civil Court more precisely the ld. Additional District Judge Fast Track Court, vide his judgment dated 6.9.2005 which has been placed on record by the petitioner in one of the reference titled as Gandhi Ram vs. GM, Chamera Hydro Electronic Project, Chamba had directed by way of an injunction to sponsor the names of the petitioner and seven other workmen similar situate to be sponsored by the respondent or grant financial package to them as per the agreement dated 5.3.1992 arrived inter se the parties. In this view of the matter too the respondent was either to grant a package to the workmen or to ensure employment to them. During the course of argument it was however brought to my notice that the three of the workmen namely Gandhi Ram, Suneet Singh and Desh Raj in pursuance to the aforesaid judgment have opted to exercise option of taking the package. If that be so the workman shall be entitled to one of the reliefs granted by the Civil Court i.e. either the package or the re-engagement. The aforesaid orders have come to be passed by the Civil Court as a sequel to the observations of the Hon'ble High Court in CWP No.488/91 whereby the petitioner and the other similar situate workmen were given the liberty to approach the competent forum.

38. In those circumstances while holding that the termination of the petitioner to be illegal and ordering the reengagement of the workman I do not deem it just and proper to order the payment of back-wages to the workman. However, the respondent shall pay an amount of Rs.20,000/- to the workman for having violated the statutory mandate of the Industrial Disputes Act. The issue is decided accordingly.

ISSUE No. 3

39. Nothing has been urged before me as to how the petitioner had suppressed material facts.

40. Though it has been pleaded by the respondent that the workman approached the Civil Court and even filed SLP against the orders of the Hon'ble High Court but the same would not amount to suppression of material fact as the cause in the aforesaid right was on different footings. As discussed above the right of the petitioner has fractified as far as the present cause goes after having put in more than one year even after the dismissal of the CWP No.488/91. It cannot thus be inferred that the petitioner had concealed material fact from this court. The issue is decided accordingly.

ISSUE No. 4

41. Nothing has been urged nor anything has been brought to my notice as to how the reference is bad for non□joinder of necessary parties. Moreover for the reasons discussed above it does not seem that any party who was necessary for the just decision of the case had not been impleaded to the lis. The issue is decided accordingly.

RELIEF

42. For the foregoing reasons discussed hereinabove supra, the reference is partly allowed. The termination of the petitioner is set aside and quashed. He is ordered to be re-engaged at the same place and post forthwith. He shall be entitled to continuity in service and seniority from the date of his termination, except back-wages. The petitioner shall however be entitled to Rs.20,000/- as compensation from the respondents for having violated the statutory provisions of the Act as ordered hereinabove. It is however made clear that the workmen who have opted for the package as per the directions of the Civil Court dated 6.9.2005 shall be entitled to either the package or reengagement as ordered above. The respondent shall either pay the entire package amount to the workman or failing which shall re-engage the workman. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 6th day of January, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 110/2006
Date of Institution : 30.8.2006
Date of decision : 2.11.2010

The General Secretary, Himshakati PWD Karamchari Sangh Jogindernagar, District Mandi, H.P. ….*Petitioner*

Versus

The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> **"Whether the demand raised by the General Secretary, Himshakati P.W.D. Karamchari Sangh, Joginder Nagar Distt. Mandi, through their demand notice dated 20.1.04 (copy enclosed) before the Executive Engineer, H.P.P.W.D. (B&R) Division, Joginder Nagar, District Mandi, H.P. are tenable, legal and justified? If yes, what relief of service benefits the aggrieved workman are entitled as per demand notice? If not, what is legal effects?"**

2. In pursuance to the reference the Union has averred in the statement of claim that the workmen had been working with the respondent as daily waged beldars, Mason and Blacksmiths in Neri, Langana and Tulah Section since the year 1998-2001 with the respondents.

3. It is the primary grouse of the union that only muster-roll for 15 days were issued to the workmen. Their services conditions were changed by the respondent Board in violation of the principle of Section 9-A of the Industrial Disputes Act (hereinafter to be referred to as the Act). It is further averred that certain juniors like Suresh Kumar, Lekh Raj, Ramesh Chand, Parkash Chand, Dalrekhan, Rajesh Kumar, Bidhi Singh, Shyam Singh, Kartar Singh, Dan Singh, Jagdish Chand, Dalip Singh, Paul Singh, Sansar Chand Gautam Singh, Avtar Singh, Sumer Singh, Parmod Singh and Smt. Geeta Devi mentioned in the para 10 of the statement of claim who had been engaged after the year 2002 and 2003 were allowed to complete 240 days in all the calendar year, whereas the workmen mentioned in the Annexure P-2 were given artificial breaks in order to deprive them of the benefits of regularization. The act of the respondent was unjustified, arbitrary and an unfair labour practice, as per the provision of the Act. The respondent had ample funds and work at their disposal, still the respondent resorted to an "unfair labour" practice of only issuing muster rolls for 15 days to the workmen. The union had raised the demand for regular muster rolls with the respondent, but to no avail and hence the present reference.

4. The union thus prays that the workmen be treated in continuous service from the date of their respective engagement. The fictional breaks be considered a part of their continuous service and the workmen be paid full wages from the respective dates of their appointment along with continuity of service.

5. While contesting the claim the respondents have averred that all the workmen had been engaged by the respondent keeping in view the work and availability of funds with the departments. It was in the knowledge of appointed only for 15 days in a month. It was admitted that all the workmen were still working with the department.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 29.9.2007 the following issues came to be framed.

1. Whether the grievances raised by the petitioners termination from the service of the petitioner by the respondent is legal and justified? OPR
2. Whether the petition is maintainable, in light of fact that the petitioner is still working under the employer? OPR

3. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No
Issue No. 2 : Yes
Relief. : Allowed as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2.

9. Both the issues are being taken up together for discussion as they are co-related and intermingled.

10. The short and simple case of the petitioner union is that the respondents had been resorting to giving fictional breaks to the workmen from the year 1998-99 as only muster-rolls for 15 days were issued to the workmen mentioned in the demand charter as Annexure P2.

11. In this behalf the petitioners have examined one Shri Anoop Singh S/o Shri Laxman Singh, who is the District Secretary of the Him Shakti Working Union. He has deposed that the respondent had employed the 38 workmen since 1998-2001 on the muster-rolls for 15 days only. The said process continued till Sept., 2007. He has further placed on record documents Ex. PW1/A, Ex. PW1/B and Mark D1 and he has further deposed that Shri Lal Singh, Chuhar Ram and Beli Ram have since retired from service and one Shri Chuni Lal has expired.

12. The respondents on the other hand have examined the Executive Engineer Sh. K.S. Thakur as RW1. He has placed on record the seniority list vide Ex. RW1/B in which the workmen are marked with red pen. In his crossexamination he has denied that the aforesaid workmen were only appointed for 15 days. As per him they were appointed for 20 days in a month only. He has further admitted that this process continued from 1998 to till August, 2007. He further admits that since September, 2007 the workmen are being issued muster-rolls for 30 days. He has also admitted that all the workmen are still working with the respondents. He has admitted the signature of one Sh. R.C. Sharma Assistant Engineer on Ex. PD, the muster-rolls of Sumer Singh, Sansar Chand, Sudhir Kumar and Ram Dhan. The perusal of Ex. RW1/B the mandays placed on record shows that in fact muster-rolls was issued to the workmen for 14-15 days right from the inception till September 2007. It is not in one odd case, but in the case of all the workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster-rolls was issued only for 14-15 days to all the workmen has not been spelt out by the respondent either in their pleadings or in their evidence. It is the version of the respondent that till September 2007 muster□rolls for only 14-15 days were issued to the workmen for want of word and funds. There is no such evidence on record to substantiate the plea of the respondents.

13. On the contrary the mandays of Sumer Singh (Ex. PD) shows that the said workmen was engaged in 1998 and since then he was being offered musterrolls for a full month. So was the case relating to Sansar Chand who was also appointed the year 1999 as is clear from Ex. PD. Sudhir Khan and Ram Dhan who came to be appointed in the year 2003 were also issued muster roll for the entire month. Admittedly even these workmen are employed in Sub-Division Lad Barohl. The Executive Engineer while appearing as RW1 has admitted that the mandays has been issued by his Assistant Engineer. Why the workmen who were admittedly senior to the aforesaid workmen were not granted the muster-rolls for the entire months has neither been explained nor their seems to be any plausible reasons for the same. After September 2007 the respondent themselves started giving full muster-roll to the workmen. They all continued working uninterruptedly but for only 15 days in a month right from the inception till September, 2007. Certain similar situated persons however continued to be granted full muster-roll. The respondent was either resorting to favourtism or acting in a partisan manner to one set of workmen or was simply resorting to such process with an object of depriving them of the status and privileges of a permanent workmen, entitling them to regularization, as per the policy of the State. It is an act of gross discrimination which is ex facie borne out from the record. There can be no two opinion about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondents.

14. The aforesaid action of the respondent as discussed above is not only an "unfair labour" practice as per the provision of Section 2 (r.a.), but is also against the provision of the 25-B of the act, which inter alia stipulates that the workmen shall be in continuous service", except because of an interruption on account of sickness authorized leave, accident, strike which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workmen. The action of the respondent in not intentionally issuing muster-roll for the entire month to the workmen was not due to any fault of the workmen. The cessation of work was caused due to the arbitrary, discriminatory attitude of

the respondent. Thus it has to be presumed that the workmen were in "continuous service", continued service uninterruptedly with the respondent from the respective dates of their engagement. The sole inference from the entire circumstances discussed above is that the action of the respondent in giving fictional breaks to the workmen and in the process disengaging them after 15-16 days every month till Sept.,2007 was illegal and against the provision of the Industrial Disputes Act.

15. It is thus held that the aforesaid workmen were in continuous uninterruptedly service with the respondent from the respective dates of their engagement . The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service of the workmen. Their seniority shall be reckoned from their initial date of engagement. Consequently the workmen mentioned in the Annexure-P2 shall be entitled to regularization from their initial date of engagement, though subject to the policy of the State.

RELIEF

16. For all the aforesaid reasons discussed above it is thus held that the aforesaid workmen were in continuous uninterrupted service with the respondents from their respective dates of engagement . The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service of these workmen. Their seniority shall be reckoned from their initial dates of engagement. It further goes without saying that the workmen shall be entitled to regularization from their initial date of engagement, though subject to the policy of the State. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 2nd day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 91/1993
Date of Institution : 5.10.1993
Date of decision : 15.12.2010

General Secretary, Employees Trade Union (INTUC), Country Liquor Bottling Plant, Mehatpur, District Una, Himachal Pradesh. *…Petitioners.*

Versus

1. General Manager, Desi Sharab Karkhana, Mehatpur, Distt. Una (H.P.)
2. Managing Director, H.P. General Industries Corporation Ltd, Circular Road, Chimla.
3. Managing Director, H.P. State Industrial Development Corporation, Himrus Building, near Himland Hotel, Shimla, H.P. *….Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR
For the Respondents : Sh. R.L. Kaith, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"कि क्या महा सचिव, एम्पलाइज ट्रेड यूनियन (INTUC) कन्टरी लिकर बोटलिंग प्लांट मैहतपुर द्वारा दिनांक 8.9.92 का संलग्न मांग पत्र जो कि प्रबन्ध निदेशक, हि0 प्र0 सामान्य उद्योग निगम, शिमला तथा जनरल मैनेजर, कन्टरी लिकर वोटलिंग प्लांट, मैहतपुर, जिला ऊना (हि0 प्र0) को दिया है, उचित व न्याय संगत है, यदि हॉ तो कन्टरी लिकर वोटलिंग प्लांट, मैहतपुर (ऊना) के कामगार किस मांग के किस समय से हकदार हैं।"

2. The demand of the workmen related to different aspects i.e. production bonus, pay scales, vacant posts, night shift allowance, tool kits etc. This Court vide an award dated 23.10.2000 dismissed the reference holding that the demands raised by the petitioners were not justified. The petitioners preferred a Writ Petition before the Hon'ble High Court bearing CWP No.418/2001. The said writ was decided on 17.4.2007 whereby on the basis of joint submissions made by the parties the award was set aside and the reference was remanded back to this Court with a direction to decide the issue of production bonus then after permitting the parties to lead additional evidence.

3. The reference in question has thus been relegated to only one point in their demand charter i.e. pertaining to the production bonus.

4. In respect of the demand pertaining to production bonus it is asserted by the petitioners in the statement of claim that the management used to pay a production bonus to all eligible categories of workmen since the inception of the factory i.e. Country Liquor Bottling Plant, Mehatpur (referred to as CLBP henceforth) till the year 1985-1986. However, thereafter the management has withheld the payment of production bonus arbitrarily and without any notice. The union has been demanding payment of said bonus from time to time and the management has been conveying to the union the matter has been referred to the State Government as is clear from the proceedings of the meetings dated 1.9.1989, 8.10.1991, 18.6.1993. The management in principle had agreed to pay the production bonus from the year 1986-1987 onwards. The demand is genuine as the workers have given more and more production in all the accounting years after 1986-87.

5. It thus averred that 20% production bonus be given to all workers of Country Liquor Bottling Plant Mehatpur for each financial year after 1986-87 with interest @18% per annum.

6. While disputing the aforesaid demand of production bonus it is averred by the respondents that demand is without jurisdiction. The matter concerns the non implementation of the provisions of the Payment of Bonus Act which is a complete code by itself the matter cannot be adjudicated as such. The said demand is not tenable. The demand of the workers for production bonus was without any basis and they were not entitled to the same, beyond the statutory bonus. The respondents denied that the management had agreed in principle to the grant of production bonus. During the course of proceedings the petitioners had moved an application for impleading HPSIDC as a party as prior to 1.4.1998. The CLBP Mehatpur was under the control of HPSIDC.

7. The respondent no.3 HPSIDC while filing reply has asserted that after 1986-87 the said corporation is not liable to pay production bonus as the assets and liabilities of CLBP was transferred to the HP General Industries Corporation Ltd. w.e.f. 31.3.1998 and the HPGIC started functioning as an independent corporation w.e.f. 1.4.1988.

8. The question of payment of production bonus had been raised by the workmen in the year 1992. However the year-wise details of the statutory bonus good performance reward paid to the workers of the CLBP Mehatpur w.e.f. 1983-84 to 1987-88 was as under:

Year	Statutory Bonus	Good performance Bonus
1983-84	—	15%
1984-85	8.33%	10%
1985-86	8.33%	—
1986-87	8.33%	—
1987-88	8.33%	—

9. The question which arises for determination after the remand can be cast thus:

1. Whether the demands of the workmen as contained in the demand notice dated 8.9.1992 in relation to the production bonus is genuine and justified if so to what relief the workmen are entitled to.
2. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. : Yes
Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

11. The provisions of Section 11 of the Payment of Bonus Act, 1965 visualize a situation regarding payment of bonus based on "allocable surplus" of particular year. Section 11 of the Act thus reads:

> "**11. Payment of maximum bonus—**(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.
> (2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section".

12. The term "allocable surplus" has been defined under Section 2 (4).—The conjoint reading of both the provisions show that an establishment or a company has to pay the bonus over and above the minimum bonus contemplated under Section 10, as postulated in Section 11 of the Act.

13. It would be apposite to first and foremost go through the provisions of Section 3 of the Act as it will have a major bearing on the question formulated for determination, more particularly regarding the legal necessity of the respondents of paying the production bonus as claimed. Section 3 reads thus:

> "**3. Establishments to include departments, undertakings and branches.—**Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:
> Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus".

14. Now adverting to the factual matrix of the present case the petitioners initially examined one Ashok Kumar, General Secretary of the Employees Trade Union (INTUC) as PW1. He has inter alia deposed that the Country Liquor Bottling Plant (CLBP for short) had started production in the year 1975. The workers were getting the statutory bonus @ 8.33 per cent from the very beginning. The workers had also been getting production bonus till the year 1996 at the rate of 2.67%. Thereafter the workers had been demanding the same but it was not paid to them. It is further deposed by this witness that the production of the CLBP had increased from 14 lac proof liters to 32 lac proof liters from 1986 to 1993.

15. One Sh. S. N. Sinha, an officer on special duty has been examined as RW1. Per him the bonus which was given as production incentives has not been paid to the workers since 1986 because the workmen have not achieved the target production since 1986.

16. While leading additional evidence the petitioners have examined one Sh. G.C. Thakur, Senior General Manager HPGIC, CLBP Mehatpur district Una as PW1. He has deposed that the record prior to 1987 to 1988 is with the State Industrial Development Corporation (SIDC) Shimla. The unit had been transferred to the Himalayan Fertilizer on 1.4.1988 which later on came to be named as HP General Industries Corporation Ltd. The employees of the CLBP, Mehatpur are getting the statutory bonus @ 8.33%. Further per him there was no understanding between the employer and employees that the workers would be paid the production bonus. The witness has further admitted that the HPGIC consists of the of the following units:

1. Country Liquor Bottling Plant Mehatpur
2. Nurpur Silk Mills, Nurpur
3. Furniture Factory, Bilaspur
4. Mining Project, Bilaspur
5. Shawl Shops, Shimla
6. Country Liquor Bottling Plant, Parwanoo
7. Furniture Factory, Chambaghat, Solan

It is further deposed by this witness that the balance-sheet and the profit and loss account of all the aforesaid units are prepared at HPGIC head office Shimla. The HPGIC is running in losses since the amalgamation.

17. The petitioners have further examined Sh. T.S. Panwar, General Manager, CLBP Mehatpur as PW2 the said witness has placed on record the annual reports and accounts of the HPGIC Ltd. w.e.f. 1988-89 till 2007-2008 as Exhibits PW2/B to Ex. PW2/V. In cross-examination this witness has been admitted that since the factory has been transferred to the HPGIC no production bonus has been given to the workers and the profit and loss statement of the HPGIC is made as a whole.

18. The respondents on the other hand have examined one Hoshiar Singh, Dy. Manager, Finance and Accounts, HPSIDC as RW1 and one Davender Kumar Jain, Manager (Finance and Accounts) of the HPSIDC as RW2. Both the witnesses have deposed that the Country Liquor Bottling Plant was transferred and vested with the HPGIC Ltd. w.e.f. 1.4.1998 and the liabilities thereof on account of bonus etc. rests with the HPGIC. They have further deposed that prior to 1.4.1988 the HPSIDC had released bonus/good performance reward to the workmen of the CLBP @ 15% in 1983□84 and 10% in 1984-85 over and apart the statutory bonus offered @ 8.33%.

19. The HPGIC has examined Sh. Kuldeep Sharma, Senior Assistant (Accounts) as RW3. He has deposed that the name of the company was changed from Himalayan Fertilizer Limited to HPGIC Ltd. w.e.f. 21.9.1988. Eight industrial units were transferred from the HPSIDC Ltd. w.e.f. 1.4.1988 including the CLBP, Mehatpur. The HPGIC had taken over the employees from the HPSIDC without changing their service conditions. There was no terms fixed for grant of production bonus in their service nor it was introduced later on. Further, per this witness the profit and loss account of the corporation are prepared in consolidated form, as per the requirements of the Companies Act. The Corporation is continuously running into accumulated losses ever since the year 1988 and 1989 till 2008-09 except for the financial year 1997-98, 1998-99 and 2004-05. The profits and loss incurred by the Corporation has been placed on record Ex. R3/B. As per the certificate issued by the Chartered Accountant there is no availability of "allocable surplus" funds and as such no bonus is required to be paid. This is the entire evidence produced on record by the parties in support of their respective contentions.

20. Admittedly the HPSIDC had been paying bonus over and above the statutory bonus to the workmen of the CLBP, Mehatpur. As per the terms of the agreement/memorandum of understanding for the transfer of departmental units from the HPSIDC to the erstwhile Himalayan Fertilizer Ltd. (now HPGIC) the workman were to be transferred on the same terms and conditions, it would not be in any way less favourable than those applicable to the employees/workmen immediately before their transfer. The said understanding is clear from the perusal of Ex. R3/C on record.

21. The main contention of the respondents is that CLBP Mehatpur is not a separate unit. The HPGIC is a company of six undertakings and as per the provisions of the Company law only one balance-sheet is being prepared by the respondent jointly in respect of all its units and the HPGIC is running in accumulated loss since 1988-89. On the other hand it is the contention of the petitioners that the HPGIC is not a single identity having been created by the merger of the six units and even the loss and profit statement of the units are prepared separately and as such the petitioners/ workmen are entitled to the production bonus as per the profit and loss statement of the CLBP, Mehatpur alone.

22. The Ld. counsel for the respondents have placed on record a judgment of Hon'ble Supreme Court titled as Mathuradas Kanji and others vs. Labour Appellate Tribunal and others (AIR 1958 SC 899) and M/s. Titaghur Paper Mills Co. Ltd. vs. Their Workmen etc. (AIR 1959 SC 1095) to contend that the extra payment and bonus depends not on extra profits but on the basis of extra production. He would thus contend that the workmen in the present case are not entitled to the production bonus. I am afraid the ratio of two judgments may not come to the rescue of the respondent as both the judgments were rendered by the Hon'ble Supreme Court before the enactment of the payment of Bonus Act, 1965. At that point of time the said ratio could have been applicable as now the amount to be paid over and above the statutory bonus depends upon the "allocable surplus" as defined under Section 2(4) of the Payment of Bonus Act, 1965.

23. The Ld. counsel for the petitioner has also lead much stress on the fact that the HPGIC even despite being an amalgamation of different undertakings is preparing the balance-sheets and profit and loss accounts cumulatively and as such the basis of "allocable surplus" has to be taken into consideration as a whole. In this behalf he has placed reliance on the judgment of Hon'ble High Court of Madras titled as Management of K.C. P. Ltd. Central Workshop, Madras vs. Secretary, K.C.P. Employees Asscn. Madras and others (AIR 1969 Madras 370) and the judgment of the Hon'ble Supreme Court titled as The Workmen of HMT and another vs. The Presiding Officer, National Tribunal Calcutta and Ors. (1973 LAB. I.C. 1043).

24. However both the sites have placed reliance on a judgment of the Hon'ble Supreme Court titled as Workmen of Binny Limited vs. Binny Limited and Anr. (1985 LAB. I.C. 1792). The petitioners on the other hand have also placed reliance of judgment of the Hon'ble Allahabad High Court titled as Workmen, Somaiya Organics (India) Ltd. vs. Somaiya Organics India Ltd. Barabanki and others (1981 LAB. I.C. 366) to contend that where a company has two units, the employees of one unit cannot claim bonus on the basis of the profits of the other unit.

25. Admittedly the respondent is an establishment in the public sector and a corporation. The Corporation includes certain units which were taken over from the HPSIDC. The units consolidated to form the corporation included Liquor Bottling Plants, Silk Mills, Mining Project, Furniture Factory and the like. All the units or establishments which were joined together to form the corporation had distinct entities. They were working in different sphere. Strictly speaking the different units amalgamated to form the Corporation cannot be termed to be a department, undertaking or a branch. Even assuming the Country Liquor Bottling Plant (CLBP) Mehatpur is to be considered a department/undertaking or a branch and has to be treated as part of the establishment for the purposes of computation of bonus as per Section 3 of the Bonus Act, Section 3 in itself engrafts a exception in the form of a proviso that where a separate balance□sheet or profit and loss account are prepared and maintained in respect of any such branch then such branch shall be treated as a separate establishment for the purposes of computation of bonus. In fact the judgments of the Hon'ble Supreme Court in the Binny's case (1985 LAB. I.C. 1792) and the HMT Workmen's case (1973 LAB. I.C. 1043) also holds so.

26. A look at the annual reports and accounts of the HPGIC Ex. PW2/B to Ex. PW2/V show that invariably in all the years loss and profit accounts of the Country Liquor Bottling Plant Mehatpur, Nurpur Silk Mills, Mining Project, Furniture Factory and the Hosiery Unit Nalagarh and other places were recorded separately. All the reports highlighted the profits or the losses earned by the respective units during the financial year. No doubt the balance-sheet might have been prepared collectively, but the same was being done for the purposes of the Companies Act alone. For instance the 35th annual report of the HPGIC for the year 2007-08 (Ex PW2/B) shows that the CLBP Mehatpur and Parwanoo resulted in the production of 27.9 lac (proof liters) and the unit has been able to sell 26.22 lac proof liters and earned a profit of Rs.50.06 lac. Thus it is apparent that the unit had earned profit in the said financial year. If the profit and loss account of the CLBP is kept in mind during the financial year the workmen would have been entitled to the maximum bonus stipulated under Section 11, keeping in view the profits earned by the unit. In the present case the respondents seek to take refuge in the plea that a consolidated balance-sheet is being prepared for all the units and as such even the proviso under Section 3 would not be attracted. Admittedly if a separate balance-sheet had been prepared for CLBP Mehatpur, the respondents would have no answer to the claim made by the petitioners. On the strength of the profit and loss accounts of the individual units mentioned in the annual reports it is clear that the claim of the workmen for production bonus is indeed made out. In fact in such a situation the Hon'ble Supreme Court in Binny's case, discussed hereinabove supra (1985 LAB. I.C. 1792) goes on to hold that in such circumstances the Courts and Tribunals can even go to the extent of directing a company to prepare balance-sheet in terms of the loss and profit accounts under Section 25 of the Payment of Bonus Act, and in the light of such balance□sheet so prepared, the Court can proceed to award bonus on the "allocable surplus".

27. It is by now fairly well settled that in matters of public welfare especially involving labour, the terms of contract and the provisions of law are to be liberally construed. In the case in hand the perusal of the entire conspectus of law and the annual reports on record show that the respondents have a complete set of profit and loss accounts of the CLBP on record. For all the financial years the respondents have a clear idea as to what is the profit and loss earned by the CLBP in one financial year. Even if, no separate balance-sheet were prepared the profit and loss account was within the knowledge of the respondents. It was rather prepared even while preparing the consolidated balance-sheet. On the basis of the said profit and loss accounts the respondents were duty bound to have calculated the "allocable surplus" and made payment of maximum bonus as per the provisions of Section 11. The said bonus was only payable to the workmen of CLBP Mehatpur alone and not to the workmen of the HPGIC.

28. The aforesaid findings get further strength from the fact that the erstwhile employer i.e. the HPSIDC was paying special incentive bonus to the workmen prior to the take over by the HPGIC. The minutes of the meetings between the management and the employees Ex. PA to Ex. PD and Ex. PK show that the management itself had forwarded the case of paying production bonus to the employee. The same was pending subject to t he decision by the state finance department and the Cabinet. How and why the Cabinet decision was being awaited is beyond comprehension. It was for the BOD of the Corporation to have taken the decision, though as per the requirements of the Bonus Act. The approval of the Cabinet or the state finance department was never required. The management kept on waiting for the approval of the finance department, which apparently never came and in fact was not even required.

29. For the reasons discussed hereinabove it is held that the demand of the workmen in relation to the production bonus was legal and justified. The issue is decided accordingly.

RELIEF

30. For all the reasons discussed hereinabove the reference is allowed. The demand of the petitioners/workmen for production bonus is held to be legal and valid. Consequently the respondents shall grant them bonus as per the requirement of Section 11 after working out the "allocable surplus", for each financial year, after the year 1988. It is however made clear that the bonus shall be payable only to the workmen of the CLBP Mehatpur and as

per the provisions of the Bonus Act, 1965. The respondents shall calculate the amount year-wise and pay the same to the employees within three months from the date of award. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 15th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 347/2009
Date of Institution : 23.5.2009
Date of decision : 21.12.2010

Shri Gojru Ram S/o Shri Barfu Ram, R/o Village Kothi, P.O. Khadhiyar (Thara), Tehsil Joginder Nagar, Distt. Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, Distt. Mandi, H.P.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> **"Whether demand of Sh. Gojru Ram S/o Shri Barfu Ram through Bhartiya Mazdoor Sangh not to regularize him on the completion of 8 years service in the year, 2001; where as junior to him in the similar service S/Sh. Metu Ram, Sohan Singh as Beldar and Sh. Dhani Ram as Mason have been regularized, is fair and justified? If not, from which date Sh. Gojru Ram is entitled for regularization and other service benefits."**

2. In pursuance to the reference it is averred by the petitioner that he was engaged as a beldar on daily waged basis in Sub Division Lad Bharol on 25.7.1993. He was engaged as a blacksmith w.e.f. 25.8.1993 and he worked as such till 31.12.1994. It is further averred by the petitioner that w.e.f. 1.1.1995 to 31.1.2000 the petitioner had discharged duties as a blacksmith but he had been made payments of a beldar by the respondent. The petitioner had raised an industrial dispute and during the process of the conciliation he had been provided the muster rolls of a blacksmith w.e.f. 1.2.2000. Thereafter the petitioner is working continuously as a blacksmith till date. The respondents have not considered the period between 1.1.1995 to 31.1.2000 as a blacksmith.

3. The petitioner had earlier filed an application under Section 33-C (2) of the Industrial Disputes Act (hereinafter referred to as the Act) and the same was decided on 6.9.2005 whereby the respondents had been directed to pay wages of a blacksmith to the petitioner w.e.f. 1.1.1995 to 31.1.2000 as the petitioner was held to have discharged the duties of a blacksmith during the said period.

4. It is thus averred by the petitioner that the respondents while regularizing his services as a beldar vide order dated 22.12.2006 has not considered the earlier orders passed by this Court on 6.9.2005 in an application under Section 33-C (2) preferred by the petitioner. It is also the case of the petitioner that one Raju Ram who had been engaged as blacksmith in Lad Bharol Sub Division in the year 1996 has been regularized as a blacksmith by the respondents in the year 2006, while the petitioner has regularized as a beldar.

5. It is averred by the petitioner that one Metu Ram S/o Sh. Mehar Dass and Sohan Singh S/o Shri Chetru Ram who were also appointed as a daily waged beldars along with the petitioner on 25.7.1993 have been regularized as beldars w.e.f. 1.4.1998.

6. It is thus the case of the petitioner that neither he has been regularized as a blacksmith after completing 8 years of continuous service as on 31.12.2001 and nor he was regularized as a beldar w.e.f. 1.4.1998 along with Metu Ram, Sohan Singh and one Dhani Ram. He thus prays that he be ordered to be regularized as a beldar w.e.f. 1.4.1998 i.e. from the date Metu Ram, Sohan Singh and Dhani Ram had been regularized.

7. The respondents while contesting the statement of claim have raised the preliminary objections vis-à-vis maintainability, misjoinder and the petition being bad on account of delay and laches.

8. On merits it is not denied by the respondents that the petitioner had not been engaged as a beldar on 25.7.1993. Per the respondents the petitioner worked as a blacksmith w.e.f. 25.8.1993 to 24.12.1994. He continued worked in different categories w.e.f. 25.12.1994 to 24.12.1999. In between the petitioner worked as Mason w.e.f. 25.2.1995 to 24.3.1995 and as a blacksmith again from 25.1.1996 to 24.2.1996 and he had been paid the wages for the category in which he had actually worked in the said period. It is not denied that the petitioner had approached this court by way of an application under Section 33-C (2) of the Act. Per the respondents in furtherance to the said judgment/order the petitioner has been paid an amount of Rs.27197/- on account of difference of wages as blacksmith plus Rs.5000/- as litigation expenses.

9. It is further the case of the respondents that the petitioner was regularized on 22.12.2006 as a beldar, keeping in view the working days for the category of the post he had worked as a daily wager. Since he had not completed the requisite years of continuous service as blacksmith, he was regularized in the lower post of a beldar as per the policy of the State. It is admitted that Raju Ram was working as daily waged blacksmith since the year 1995. It is also admitted that the services of Metu Ram S/o Mehar Dass and Sohan Singh S/o Shri Chetru Ram have been regularized as beldars w.e.f. 1.4.1998, keeping in view the seniority and availability of sanctioned posts in that division. It is thus prayed that the reference be dismissed.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 21.7.2010 the following issues came to be framed for determination:

1. Whether the action of the respondent in not regularizing the services of Gojru Ram in the year, 2001 whereas juniors had been regularized by the respondent is illegal and unlawful, as alleged. If so, to what relief the petitioner is entitled to? OPP
2. Whether the reference is hit by the vice of delay and laches, as alleged. If so, its effect thereto? OPR
3. Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : No
Relief. : Reference is partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

13. The two pronged attack of the petitioner vis-à-vis his regularization is that neither his services were regularized as a beldar along with Sh. Metu Ram and Sohan Singh who had been engaged as beldars along with the petitioner on 25.7.1993 and regularized on 1.4.1998 and nor he was regularized as a blacksmith w.e.f. 2001 after having completed 8 years of continuous service as a blacksmith and eventually the respondents have regularized him as a beldar w.e.f. 22.12.2006. One Raju Ram who was engaged as a blacksmith in the year 1996 has since been regularized as blacksmith in the year 2007.

14. It is not denied by the respondents that Metu Ram and Sohan Singh who were also appointed on 25.7.1993 along with the petitioner have since been regularized as beldars w.e.f. 1.4.1998. It is also not in dispute that when Raju Ram who was appointed as a blacksmith in 1996 has also since been regularized as blacksmith in the year 2007. The mandays placed on record by the respondents themselves (Ex. RB) also conclusively shows that the

petitioner had worked continuously since 1993 and has also completed more than 240 days uninterruptedly after the year 1994.

15. The only bone of contention is the category of work the petitioner had been undergoing with the respondents. Per the petitioner he has worked continuously as a blacksmith while as per the respondents the petitioner has worked under different categories and as per the policy of the State he has been regularized in the category in which he has worked for a longer period i.e. category of a beldar. It is not disputed by the respondents that vide an earlier judgment/order of this Court dated 6.9.2005 Mark D1 the petitioner had been granted the wages of a blacksmith w.e.f. 1.1.1995 till 31.1.2000. It is further admitted by the Executive Engineer who has appeared as RW1 Sh. K.S. Thakur that the petitioner had been issued muster rolls of a blacksmith from February, 2000 till 2006. The order passed by this Court earlier has been implemented by the respondents and the wages of blacksmith have since been released to the petitioner from 1.1.1995 till 31.12.2000.

16. It is thus apparent from the record that in fact the petitioner has worked continuously as a beldar right from the year 1994 as admittedly prior to 1995 also the petitioner has worked as a daily waged blacksmith from 25.8.1993 to 24.12.1995. If that was so admittedly the petitioner was senior to Raju Ram who was appointed for the first time as a blacksmith on 9.11.1995 as is clear from Ex.RW1/E. The fact that the petitioner was not regularized as a beldar along with Metu Ram and Sohan Singh who had been engaged along with him further fortifies the claim of the petitioner that he was working as a blacksmith with the respondents. For, had the petitioner been working as a beldar he would have been regularized along with the said beldars i.e. Metu Ram and Sohan Singh as far back the year 1998. The respondents thus did not regularize his services as a beldar, for, apparently he was working as a blacksmith with the respondents. The said fact is further corroborated the findings recorded by this Court vide its earlier order dated 6.9.2005. The said order has attained finality as it was never challenged by the respondents. It is thus to be inferred that the petitioner worked uninterruptedly as a blacksmith right from 25.8.1993 till the year 2006. He was thus required to be regularized as blacksmith with Raju Ram, if not earlier. As per Ex. RB the petitioner had completed 10 years of continuous and uninterrupted service (with 240 days in each calendar year) in the year 2003. The petitioner was thus liable to be regularized w.e.f. the year 2004 or he had to be regularized as a beldar w.e.f. 1.4.1998 along with Metu Ram and Sohan Singh. However since the petitioner had not been working as beldar as has been proved on record and discussed hereinabove supra the petitioner was indeed entitled to regularization after having completed 10 years continuous service (with 240 days in each calendar year) regularized w.e.f. 1.4.2004 as a blacksmith. The action of the respondents to the contrary and that too regularizing him as a beldar is thus illegal and unsustainable.

17. The Ld. Dy. D.A. has very vociferously urged that the petitioner is estopped from raising such a plea as he had earlier filed an application under Section 33-C (2) for seeking only the wages of blacksmith and since he had not claimed for regularization thereto. The petitioner is estopped from raising the said issue time and again. I am afraid the said contention of the Ld. Dy.D.A. is not sustainable as after having released the entire back wages of a blacksmith to the petitioner it was expected that the respondents would have considered the petitioner as a blacksmith for the entire period in question and also regularized him as consequence thereof, as a modal employer. The import and implication of the earlier order was clear and categorical that the petitioner had indeed worked as a blacksmith. The said order granting back wages to the petitioner from 1.1.1995 till December, 2010 and that too having not been assailed clearly implied the petitioner indeed worked as a blacksmith with the respondents. Rather than regularizing him as such the respondents regularized the services of the petitioner as a beldar in the year 2006. Apart from being a fresh cause of action the respondents had otherwise acted in a manner which was arbitrary and illegal as the persons appointed along with the petitioner had already been regularized as beldars in the year 1998 itself. Had the petitioner been a beldar even he was to be regularized as such in the year 1998 itself. This not only corroborates the version of the petitioner that he was working as a blacksmith, but also highlights the respondents discrimination perpetuated by the respondents between similar situated persons. The plea of estoppel thus does not lie in the mouth of the respondents. Consequently the action of the respondent in regularizing the petitioner as a beldar in the year 2006 is set aside and quashed. The respondents are directed to regularize the petitioner as a blacksmith w.e.f. 1.4.2004 as he had completed more than 10 years as a blacksmith continuously and uninterruptedly (with 240 days in each calendar year). Needless to reiterate that all consequential benefits shall also flow accordingly. The issue is partly decided in favour of the etitioner and against the respondent.

ISSUE No. 2

18. The petitioner had been regularized as a beldar w.e.f. 22.12.2006, though he was liable to be regularized as a blacksmith. The said regularization gave a fresh cause to the petitioner. The Conciliation-cum-Labour Officer Mandi had referred the industrial dispute to the Labour Commissioner on 10.2.2007. It can well be inferred that the demand was thus apparently raised by the petitioner somewhere in the year 2006 itself. That being so it cannot be said by any stretch of imagination that the claim was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for

determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram case (2007 LHLJ 903). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

> " …….. While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years….."

RELIEF

19. For all the aforesaid reasons discussed above the reference is partly allowed. The respondents are directed to regularize the services of the petitioner as a blacksmith w.e.f. 1.4.2004. All consequential benefits shall follow accordingly. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 378/2009
Date of Institution : 18.7.2009
Date of decision : 3.11.2010

Shri Hakam Singh s/o Sh. Rattan Chand Village & P.O. Shanan, Tehsil Jogindere Nagar, Distt. Mandi, (H.P.) through Him Shakti P.W.D. Karamchari Sangh (Affiliated to BMS) Joginder Nagar, Distt. Mandi, H.P. . .*Petitioner.*

Versus

1. The Executive Engineer , HPPWD,(B&R) Division Joginder Nagar Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR.
For the Respondents : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> **"Whether demand of Him Shakti P.W.D. Karamchari Sangh (Affiliated to BMS) Joginder Nagar, Distt. Mandi before i) The Executive Engineer , HPPWD (B&R) Division Joginder Nagar, Distt. Mandi, H.P. for regularization of Sh. Hakam Singh s/o Sh. Rattan Chand as Chowkidar w.e.f. 01.04.1998 or 01.04.2000, after completion of 8 or 10 years of service as daily wages worker, as per earlier policy of State Govt. or after completion of 10 years of continuous service as per judgement of Hon'ble Supreme Court of India-Mool Raj Upadhaya v/s State of H.P. of 1994, respectively, instead of his regularization on 22.3.2005 and further retiring him on 28-2-2008 instead of 01-11-2006 after attaining the age of 60 years (as per previous policy of Govt.) is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to?"**

2. In furtherance to the reference the petitioner has averred in the statement of claim that he was engaged on daily waged basis in the B & R Sub-Division Joginder Nagar in the year 1990 and he continued to work as such till Feb., 2005. He had completed more than 240 days in each calendar year.

3. The petitioner was regularized in the pay scale of Rs. 2520-4140/- on 16-2-2005, whereas having completed 8 years of continuous service (within a minimum of 240 days in each year) the petitioner was to be regularized w.e.f. 1- 1-1998.

4. It is further averred by the petitioner that on the basis of the Judgement as in the Gehar Singh's case the respondent state had issued a notification and as a sequel thereto he has now been regularized as a Chowkidar w.e.f. 1-1-2000 and even arrear had been paid to him accordingly.

5. It is further the case of the petitioner that on the basis of his date of birth as recorded in the service book the petitioner has now been retired by the respondent w.e.f. 31-10-2006 on attaining the age of 58 years. It is further averred by the petitioner that as per Fundamental Rule 56 (b) which has been amended by the State Government w.e.f. 10-5-2001 an employees appointed on the said date or onward in the capacity of work charge or a regular employee have been held to be liable to be retired after attaining the age of 58 years. Since the petitioner has been regularized w.e.f. 1-1-2000 he was entitled to be retired after attaining the age of 60 years that is on 31.10.2008. The action of the respondent in superannuating the petitioner on 31-10-2006 is thus illegal. The petitioner thus prays that the respondent be directed to superannuate the petitioner after completion of 60 years instead of 58 years and to pay all consequential service benefit thereto

6. While contesting the claim the respondents have raised preliminary objection vis-à-vis jurisdiction, suppression of material facts, maintainability and locus-standi. It is not denied by the respondent that initially the petitioner was regularized as a chowkidar w.e.f. 22-2-2005 and thereupon as per the notification of the Himachal Pradesh Government dated 2/2008 the petitioner has been regularized w.e.f. 1-1-2000. It is further averred by the respondent that as per the notification dated 10-5-2001, the petitioner has been retired from the service after attaining the age of superannuation that is 58 years on 31-10-2006. It is further averred that the date of birth of the petitioner is 25-2-1947 and consequent upon his regularization w.e.f. 1-1-2000, he was due for retirement on completion of 60 years on 28-2-2007 but his regularization was made on receipt of Himachal Pradesh Govt. notification dated 02/2008 and the petitioner was retired on 31-10-2006. It is therefore, prayed the claim petition be dismissed .

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 24.4.2010 the following issues came to be framed.

1. Whether the action of the respondent in retiring in superannuating on 1-11-2006, at the age of 58 years was illegal and unjustified, as alleged OPP.
2. If issue 1 is proved in affirmative, to what amount of back wages and consequential benefit, the petitioner is entitled to? OPP
3. Whether this Court has no jurisdiction to entertain and decide the case, as alleged. If so, to what effect? …OPR
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : As per operative part of the award.
Issue No. 3 : No.
Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 & 2.

10. Both the issues are being taken up together for discussion as they are co-related and intermingled.

11. As regards the regularization of the petitioner the reference has become infructuous as he already stands regularized w.e.f. 1-1-2000 vide a Govt. notification dated 02/2008. The only dispute now pertains to the retirement of the petitioner. Per him he was to superannuate at the age of 60 years, while he has been superannuated on 1-11-2006 after having attained the age of 58 years.

12. The said facts is not primarily disputed by the respondent. Per the respondent the petitioner was retired on 1-11-2006 after attaining the age of 58 years as per notification dated 10-5-2001 issued by the state.

13. The state of Himachal Pradesh vide notification dated 10-5-2001 by virtue of powers conferred under article 309 of the Constitution of India Amendment Rule 56 of the Fundamental Rule to read thus:

> In Rule-56 of the Fundamental Rules (a) After clause (b) the following proviso shall be inserted, namely:- " Provided that a workman appointed on or after the date of publication of this notification in the Rajpatra Himachal Pradesh shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years"

15. The said notification was issued on 10-5-2001. As per the aforesaid amendment a workmen appointed on or after 10-5-2001, rather after the publication of the said notification in the Rajpatra were to retire at the age of 58 years though nothing has been produced on record by the respondent as and to when the said notification was published in the Rajpatra, but certainly it has to be after 10-5-2001. Admittedly the petitioner had been regularized w.e.f. 1-1-2000. Though the notification was issued in the year 2008 but it was done retrospectively i.e. w.e.f. 1-1-2000. As per the amendment made in the Fundamental Rules only the workmen who were appointed after 10-5-2001 were to be retired at the age of 58 years. The petitioner having been regularized w.e.f. 1-1-2000, his retirement was to take effect only on the completion of 60 years.

16. As per the record placed before this Court and admitted by the parties the date of birth of the petitioner is 15-2-1947. After having put in 60 years, he was to retire on 28-2-2007. The respondents had retired the petitioner on 31-10-2006. In fact as per the amended provision of the F.R. , even if the petitioner was to be superannuated after completion of 58 years he was to retire on 28-2-2005. As held hereinabove the amended provision was not applicable to the petitioner. Even otherwise the respondent has allowed the petitioner to continue working till 31-10-2006. Only after he was regularized w.e.f. 1-1-2000, that he was ordered to be retired on 31-10-2006. The petitioner however was to retire on 28-2-2007. The respondent have already continued with the service of the petitioner till 31-10-2006. The act of the respondent in retiring the petitioner on 31-10-2006 is illegal. He thus ordered to be retired w.e.f. 28-2-2007 after having attained the age of 60 years. As a sequel thereto the petitioner shall be ordered to have superannuated w.e.f. 28-2-2007. The petitioner having already work till 31-10-2006 he shall be only entitled to the wages for 4 months thereafter till his retirement on 28-2-2007.

17. Both the issues are decided accordingly partly in favour of the petitioner.

Issue No. 3

18. Nothing has been urged nor any thing has been brought to my notice as to how this Court has no jurisdiction to entertain and decide the issue. The issue is accordingly decided against the respondent.

RELIEF

19. For all the aforesaid reasons discussed above the reference is partly allowed. The act of the respondent in retiring the petitioner on 31-10-2006 is held illegal. He is thus ordered to have retired w.e.f. 28-2-2007 after having attained the age of 60 years. The petitioner having already work till 31-10-2006 he shall only be entitled to the wages of 4 months only i.e. till 28-2-2007. The reference is disposed in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 3rd day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 11/2006
Date of Institution : 3.1.2006
Date of decision : 6.12.2010

Shri Hem Raj S/o Shri Tota Ram, R/o Village Kothi, P.O. Chandpur, Tehsil Sadar, Distt. Mandi, H.P. and (8) others Workmen, H.P. State Handicraft and Handloom Corporation, Bilaspur, H.P. *…Petitioners.*

Versus

Managing Director, H.P. State Handicraft and Handloom Corporation Ltd. S.A.D. Complex, Kasumpati, Shimla, H.P. *…Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Raghu, Adv.
For the Respondents : Sh. Pawan Chandel, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"क्या श्री हेम राज सपुत्र श्री तोता राम तथा अन्य (8) कामगारों द्वारा सामूहिक मांग पत्र (प्रति संलग्न) के माध्यम से कुशल श्रेणी का दर्जा तथा (8) वर्ष का कार्यकाल पूरा करने पर नियमित किए जाने की मांग प्रबन्ध निदेशक, हि0 प्र0 राज्य हैण्डीक्राफट एण्ड हैंडलूम कारपोरेशन लि0 एस0ए0डी0 कम्पलैक्स, कसुम्पटी, शिमला–9 से उठाना उचित व न्यायोचित है? यदि हॉ, तो उपरोक्त प्रभावित कामगार किस तिथि से कुशल श्रेणी और नियमतिकरण के पात्र होंगे?"

2. In pursuance to the reference the petitioners have averred in the statement of claim that they are working under the respondent as skilled workmen and are performing their duties honestly and sincerely since their respective dates of appointment as details below:

1. Hem Raj 19.8.1993
2. Prem Lal 19.8.1993
3. Rajesh Kumar 21.8.1993
4. Chaman Lal 20.8.1993
5. Ram Lal 8.8.1994
6. Basu Dev 10.8.1994
7. Anand Bihari 1.8.1994
8. Vidya Devi 17.8.1994

3. The only grouse of the petitioners is that all of them completed more than 10 years of continuous service in the y ears 2003 and 2004 have since not been regularized by the respondent corporation. Per the petitioners the State of H.P. has already formulated a policy in respect of all Corporations and Boards whereby workmen who have had put in 10 years continuous service are liable to be regularized, but the corporation had failed to abide by the said instructions issuing by the State. It is further averred by the petitioners that the employees of the Corporations and Boards and the departments of the State of H.P. have been regularized after completion of 10 years of service. The petitioners thus pray that the respondent be directed to regularize the petitioners from the date on which the petitioners have put in 10 years of regular service with the corporation, along with all consequential benefits therein.

4. The respondents while contesting the claim have inter alia raised the preliminary objections vis-à-vis maintainability, suppression of materials facts and the petitioners having no legal and enforceable cause of action against the respondents.

5. On merits the respondents have not disputed that the petitioners were not engaged in the corporation. However the respondents have reflected the different dates on which the petitioners had been engaged and all the petitioners are stated to have been engaged in the year 1994, though as unskilled workers. The petitioners are stated to have been engaged as skilled workers w.e.f. 1.1.2006.

6. As regard the regularization of the petitioners it is the case of the respondent corporation that the instructions issued by the Govt. in this behalf were applicable only in case of daily paid/contingent workers. The petitioners have been working with the corporation as workers under the Minimum Wages Act, 1948 and the instructions to regularize the persons after completion of 10 years of continuous service are not applicable to this category. The respondent corporation is providing production facilities to the petitioners along with livelihood opportunity and their wages are directly linked to the production, on the principle of "Enhanced Work-Enhanced wages". The respondent corporation is providing marketing facilities to the produce of the petitioners at its own costs. Accordingly the claim of the petitioners for regularization is not tenable. It is further averred by the corporation that it

is facing acute financial stringency and is in the process of down sizing its staff strength. The petitioners are however, being given regular work and all financial benefits under the Industrial Disputes Act. They have been upgraded from unskilled/semi skilled to skilled category w.e.f. 1.1.2006 and are being paid wages accordingly.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 7.7.2007 the following issues had came to be framed by my ld. Predecessor.

1. Whether the disengagement from the service of the claimant by the respondent is legal and justified?
2. Whether the claimant is entitled to the relief as asserted in the claim petition. OPP
3. Whether the claim petition is maintainable? OPR
4. Whether the claimant has locus standi in the claim petition? OPR
5. Relief.

9. I notice that inadvertently the issue qua disengagement has been framed whereas the issue pertain to the regularization of the petitioners. The parties have gone to trial fully knowing the import of the reference. They have accordingly led evidence on the point of regularization alone. Consequently the issues are being reframed. It is not going to prejudice the case of the parties in any manner.

1. Whether the petitioners are entitled to the regularization as claimed by them. If so to what relief the petitioners are entitled to? OPP
2. Whether the claim petition is not maintainable, as alleged. If so, their effect thereto. OPR
3. Whether the petitioners have no locus standi to file the claim, as alleged. If so, to what effect. OPR
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : No
Issue No. 3 : No
Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

11. The collective demand raised by the petitioners before the Corporation was regarding their regularization after having completed 8 years of continuous service with the respondent corporation. The short and simple demand raised by the petitioners is that they be regularized as per the policy of the respondent State, which has been made applicable to all Boards and Corporations.

12. In this behalf it is pleaded and deposed by the petitioners that they have completed more than 10 years of continuous regular service with the respondent corporation, having put in a minimum of 240 days in each calendar year and as such were entitled to regularization as per the policy of the State Government.

13. The policy in question is not disputed by the respondents and is placed on record as Annexure R-1. The respondents have placed on record a notification dated 9th of June, 2006 and 6th of May, 2000. It is however the case of the respondent that the said notifications were not applicable to the petitioners as it was applicable only in case of daily paid/contingent workers. Since the petitioners had been working with the Corporation as workers under the Minimum Wages Act, 1948 the said policy of the State, for regularizing them after 10 years of continuous service was not applicable to the petitioners. It is further averred by the respondent that these workers were provided work as per the piece rate wages and as such they cannot be regularized. One Shri Rattan Lal, Incharge, H.P. State Handicraft and Handloom Ltd. Bilaspur has appeared as RW1 and reiterated the stand taken by the Corporation. He has further deposed that the semi skilled workers are being paid Rs.2447/- and skilled workers are being paid Rs.2730/- as wages since January, 2006 as per the Minimum Wages Act.

14. Admittedly the petitioners have been working continuously and uninterruptedly with the respondent corporation since 1994 and completed and 240 days in each calendar year. The said fact is also admitted by RW1.

15. The stand of the corporation that since the petitioners are working with the Corporation as workers under the Minimum Wages Act, 1948 and as such are not covered under the policy formulated by the State does not make much sense. The Minimum Wages Act, 1948 was enacted merely to provide for fixing minimum rates of wages for

employment. The Act thus only postulates that a minimum rate of wages is required to be fixed by the appropriate Govt. in respect of the employees be it a "minimum time rate", or "minimum piece rate". How the workers covered under the umbrella of the said Act could be deprived of regularization, as per the policy framed by the State is very difficult to comprehend. The Minimum Wages Act only prescribed the minimum rates which are payable to a worker and nothing else. The ground espoused by the respondent that since the petitioners were covered under the Minimum Wages Act and as such the regularization policy of the State was not applicable to them is shorn of any merit and is ex-facie, arbitrary and illegal.

16. The respondent in a very subdued tone have averred that the petitioners were being given work as per the need of the hour on piece rate wages, but there is no evidence on record remotely suggesting that the petitioners were being paid remuneration on the basis of piece rate and based on their individual productivity level. The Incharge of the Corporation who has appeared as RW1 has neither placed on record any documents purporting to show that the petitioners were working on piece rate basis. On the contrary he has categorically deposed that the corporation is paying Rs.2447/- to semiskilled workers and Rs.2730/- to skilled workers since January, 2006. It is signifying that the responded corporation is paying wages to the petitioners on daily rate basis. Had their remuneration been on piece rate basis the monthly remunerations of all the petitioners would have been different depending upon their individual production per month. The respondents paying a composite amount to all workmen based on their category i.e. semiskilled or skilled clearly signifies that the petitioners are working on daily wage basis. That being so the plea of the respondent is not sustainable that the regularization policy of the State is not applicable to the petitioners.

17. There is no evidence on record, worth the name to remotely show that the corporation was providing production facilities to the petitioners or they were being provided marketing facilities for selling their produce at the cost of the corporation. There is also nothing on record to show that the monthly wages of the petitioners were related to their respective productions. Rather, as per evidence discussed hereinabove the petitioners were being paid a fixed lump sum remuneration on monthly basis which can be termed to be a remuneration on daily wages and not on minimum time rate or minimum piece rate.

18. For the reasons discussed above it is held that the action of the respondent in not granting the benefits of regularization as per the policy of the State is illegal. The petitioners are held entitled to be covered under the policy envisaged by the respondent State, which is otherwise applicable to all corporations and Boards in the State of Himachal Pradesh. The petitioners are held to be daily waged workers and as such the policies framed by the State in respect of such workers will be applicable to the petitioners also. The issue on hand is decided accordingly in favour of the petitioners and against the respondent.

ISSUE No. 2

19. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE No. 3

20. Nothing has been urged or brought to my notice that as to how the petitioners have no locus standi to prefer the present claim. The issue is decided accordingly in favour of the petitioners and against the respondent.

RELIEF

21. For all the aforesaid reasons discussed above the reference is allowed. The petitioners are held entitled to be covered under the regularization policy envisaged by the State of Himachal Pradesh. Consequently the petitioners shall be entitled to regularization after completion of 10 years of continuous service (with a minim of 240 days in each calendar year). Needless to reiterate that the petitioners shall be entitled to all consequential benefits arising in pursuance to their regularization. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 6th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 13/2010
Date of Institution : 16.1.2010
Date of decision : 26.11.2010

Shri Inder Pal S/o Shri Sunder Singh, R/o village Morla, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Inder Pal S/o Shri Sunder Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on November, 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-
(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
(i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
(ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
(2) An application for permission under sub□section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
(4) Where no application for permission under sub□section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (k) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on November, 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25□G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer cum Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1087/2007-9249, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/09-Mandi dated November 13, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the

redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 332/2009
Date of Institution : 30.5.2009
Date of decision : 26.11.2010

Shri Jagar Nath S/o Shri Puran Chand, R/o Village Khajurati, P.O. Cholgarh, Tehsil Sarkaghat, District Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Jagar Nath S/o Shri Puran Chand by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on September, 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay□off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing

indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.*—For the purposes of this Chapter,-
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on September, 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1169/07-812, dated 8.2.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated March 13, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 16/2006
Date of Institution : 3.1.2006
Date of decision : 15.12.2010

Shri Jagdev Singh S/o Shri Visheshar Singh, R/o Village Aghar, P.O. Panjara, Tehsil Nurpur, Distt. Kangra, H.P.*Petitioner.*

Versus

1. The General Manager, H.P. Tourism Development Corporation, Shimla-1
2. The Area Manager, H.P. Tourism Development Corporation, Dharamshala, Distt. Kangra, H.P.
3. The Area Manager, H.P. Tourism Development Corporation, Palampur, District Kangra, H.P.

....*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Tippu Khan, Adv.
For the Respondents : Sh. Dheeraj Lagwal, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Jagdev Singh S/o Shri Visheshar Singh workman w.e.f. 3.6.2003 during the pendency of proceedings before Conciliation Officer without applying for permission to change the conditions of service, which is contrary to the provisions contained in Section 33 of the Industrial Disputes Act, 1947 and giving breaks in service for one or two days after every 89 days of service during his service w.e.f.1.4.1999 by the General Manager, H.P. Tourism Development Corporation Ltd., Ritz Annexe, Shimla-1, The Area Manager, H.P. Tourism Development Corporation Limited, Dharamshala and Palampur, District Kangra, H.P. is legal and justified? If not, what relief of service benefits and amount of compensation Shri Jagdev Singh workman is entitled to from the above employers?"

"Whether denial of payment of Minimum Wages fixed by the H.P. Govt. under the provisions of Minimum Wages Act, 1948 w.e.f. 1.4.99 to July, 2003 to Shri Jagdev Singh S/o Shri Visheshar Singh workman on account of performance of duties of House Keeping, Store Keeper, Receptionist and Billiard Marker, payment of overtime wages at twice rate and providing statutory facilities of Earned Leave, National & Festival Holidays and Casual & Sick leaves as provided in H.P. Shops and Commercial Establishment Act, 1969 by the General Manager, H.P. Tourism Development Corporation Ltd., Ritz Annexe, Shimla-1, The Area Manager, H.P. Tourism Development Corporation Limited, Dharamshala and Palampur, Distt. Kangra, H.P. is legal and justified? If not, what benefits i.e. monetary, designation, regularization and compensation the above aggrieved workman is entitled to?"

2. The petitioner has filed a claim asserting therein that he was appointed as utility worker on contract basis at Hotel Dauladhar, Dharamshala on April, 1999. From the very inception the petitioner was performing the duties of an Assistant Receptionist as well as maintaining store and stock register till October, 2001. The petitioner was also allocated the work of Billiard marker at Hotel Tea Bud, Palampur and he continued working as such till October, 2003. Thereupon his services were orally terminated by the respondent without giving any notice whatsoever.

3. It is further averred by the petitioner that the respondent no. 3 i.e. the Manager Hotel Tea Bud Palampur had wrongly informed the SDM Palampur on 1.9.2003 that the services of the petitioner had been terminated w.e.f. 4th of June, 2003. Per the petitioner he continued working with the respondent till October, 2003 as is clear from the staff meal deduction register annexed along with as Annexure-A-5 to A-7 with the statement of claim. It is further averred that the petitioner who was the Zonal Secretary of HPTDC Employees Union had been victimized, more particularly as the union had filed a public interest litigation against the corporation in the Hon'ble High Court vide CWP No.1081/2002 highlighting the various acts of omission and commission of the respondent corporation and a complaint against the Manager (i.e. Respondent no. 3) to the Secretary Tourism and as such the respondent no.3 had illegally terminated the services of the petitioner.

4. Apart from alleging violation of the provisions of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act) the petitioner also claims that the respondents have flagrantly violated the provisions of Section 25-G as persons junior to him have still been retained by the respondent. One Sh. Piar Chand was appointed on 13th of July, 1999 and is still in the service of there-spondent corporation. Likewise one Vishnu Dev appointed on 9th of February, 2000 and one Vinod Kumar appointed in the year 2001 are still working with the respondent. It is also alleged that the respondent corporation has even appointed one Rajinder Thakur after the appointment of the petitioner, who has since been regularized w.e.f. 23.5.2000 at Hotel Hamir, Hamirpur.

5. The petitioner thus prays that his termination be declared as illegal and be set aside and quashed. He be directed to be re-engaged along with all consequential benefits and the respondent be also directed to pay him minimum wages prescribed by the State w.e.f. 1.4.1999 to July, 2003. He may be ordered to be regularized and the respondents be directed to pay the salary of the petitioner w.e.f. June, 2003 till October, 2003 along interst @ 18% per annum.

6. While contesting the claim the respondents have raised the preliminary objections vis-à-vis maintainability and suppression of material fact.

7. On merit it is the case of the respondents that the petitioner was appointed as an utility worker and as such he performed his duties at different places. He was appointed for a period of 85 days by way of a contract which was revised from time to time. Lastly the petitioner had been appointed vide an agreement dated 11.3.2003. However the same was not renewed after the expiry of 85 days and hence the services of the petitioner stood automatically terminated on the expiry of the said agreement i.e. 4.6.2003.

8. It is further admitted that the respondent had filed a complaint against the petitioner before SDM, Palampur as the petitioner had forcibly overstayed in the Hotel after the expiry of his contract on 4.6.2003.

9. It is further the case of the respondents that the petitioner had been terminated from service because of his rude behaviour towards his colleagues, seniors and tourists who visited the concerned hotels of the respondent corporation. The petitioner was given innumerable opportunities to mend his behaviour, but to no avail. The corporation had to apologize before the District Consumer Redressal Forum, Kangra because of the misbehavior of the petitioner with a press correspondent of Jan Satta. The petitioner did not even perform his duties to the satisfaction of his superior and as such he was not re-engaged after the expiry of the agreement dated 16.3.2003.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 23.2.2008 the following issues had come to be framed by my ld. Predecessor.

1. Whether the termination from the service of the petitioner by the respondent during the pendency of proceedings before Conciliation Officer without compliance with the mandatory statutory requirement and of administering breaks in service of the petitioner by the respondent is legal and justified? OPP
2. If the above issue is proved in affirmative to what relief of service benefit the petitioner is entitled to the respondent? OPP
3. Whether the claim petition is maintainable? OPR
4. Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No
Issue No. 2 : As per operative part of theaward.
Issue No. 3 : Yes
Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2.

13. Both the issues are being taken up together for discussion as they are intermingled and co-related.

14. Admittedly the petitioner had been working as an utility worker with the respondent corporation w.e.f. April, 1999. Per the petitioner he worked with the respondent corporation till end of October, 2003 and thereupon his services were illegally terminated without any notice and that too verbally.

15. Admittedly no notice was issued to the petitioner before his termination, for it is the case of the respondent corporation that the petitioner was appointed on contract basis. The contract was issued for 85 days at a stretch, which was renewed from time to time.

16. The last contract was issued to the petitioner on 11.3.2003 which expired on 4.6.2003. Thereafter the contract of the petitioner had not been renewed and his services had automatically come to an end.

17. The respondents in order to prove their plea that the petitioner had been engaged on contract basis examined two witnesses namely Sh. K.C. Katoch, Senior Manager, Club House, Bhagsunag, Dharamshala (RW1), who was the Manager of Hotel Tea Bud at Palampur when the services of the petitioner was dis-engaged and one Sh. K.D. Sharma, DGM, Hotel Holiday Home, Shimla as RW3 who was the then Area Manager Dharamshala. As per RW1 the contract of the petitioner had expired on 4.6.2003 and thereafter it was never renewed. Even RW3 Sh. K.D. Sharma has deposed that the contractual employees of the Corporation used to be appointed through an agreement. After the expiry of the period of agreements were renewed from time to time. Till the time the petitioner was at Dharamshala his agreements were renewed from time to time. Apart from the generalized statement made by the two witnesses there is nothing on record to remotely show that the petitioner was appointed on contract and his last contract had expired on 4.6.2003. The purported copy of the last contract or any other agreement starting from 1999 till the year 2003 have neither been placed on record nor been proved before this Court. It is otherwise the admitted case of the respondent that the petitioner worked continuously from 1999 till 2003 with the respondent corporation, though at different locations.

18. It is also admitted that Vishnu Dev and Vinod Kumar who had been appointed in the year 2000 and 2001 respectively on the same terms and conditions have since been regularized. Those facts are admitted by both, RW1 and RW 2.

19. While upholding the retention of the juniors and their regularization it is the case of the respondent corporation that the petitioner had been terminated from service because of his behaviour towards his colleagues, senior and tourists. The petitioner was given number of opportunities to mend his behaviour, but to no avail. An illustrative case of misbehavior attributed to the petitioner with some press correspondent of Jan Satta who had moved the Ld. District Consumer Redressal Forum has also been highlighted wherein the corporation had to apologize before the Court.

20. The Area Manager who has appeared as RW3 has admitted that no complaint regarding misconduct had been received by him against the petitioner. The complaint pertaining to one Sishu Patial relates to the year 2000. The said complaint is dated 22nd of January, 2000, though it does not specifically name the petitioner, but assuming it was so, it is clear that the said act of the petitioner was not the reason for his termination in fact, thereafter the petitioner worked for about three years at Tea Bud Hotel, Palampur. Even otherwise, there is nothing on record to show that any inquiry worth the name was conducted for the acts of misconduct attributed to the petitioner or that the said misconduct was the reasons for terminating the services of the petitioner. In case any penal consequences were to follow as a consequence it was required of the respondent to atleast conduct some inquiry worth the name, while terminating the petitioner on the grounds of misconduct. Admittedly no inquiry was conducted against the petitioner. The said correspondent has appeared as RW2. Even per his deposition it is not certain that it was the petitioner who had misbehaved with him. The then Area Manager who has appeared as RW3 has denied that there were any complaint of misconduct against the petitioner.

21. On the contrary the petitioner apart from examining himself as his own witness has examined one Shashi Kumar as PW2. He has corroborated the version set up by the petitioner that he had been working in hotel Dauladhar, Dharamshala in the year 2001. He has also admitted that the petitioner had been appreciated for his honesty and dedication towards duty and has also placed on record Ex. A15 and Ex. A-16 which are a certificate of appreciation and a press clipping highlighting the conduct of the petitioner. The petitioner has further examined one Surinder Thakur as PW4 who has admitted that an amount of Rs.300/- in the month of August was deducted from the petitioner towards his diet, so was an amount deducted in the month of September. An amount of Rs.160/- was also ordered to be deducted in October, 2003. He has further admitted that Ex. PW4/A is prepared in his hands and pertains to the month of July and August, 2003. If that was so, it is clear that the petitioner was working with the corporation till October, 2003. The deposition of the petitioner and his witnesses is further corroborated by PW3 Sunil Kumar. He has also deposed that he never received any complaint against the petitioner.

22. The petitioner had moved an application to the Labour Officer, Dharamshala regarding his claim for minimum wages and in this behalf the GM had written a letter to the Area Manager, HPTDC, Dharamshala on 23rd of May, 2003. The GM had directed the Area Manager to defend the case and simultaneously directed Area Manager, HPTDC Hotel Tea Bud to disengage the surplus contractual workers forthwith. The same is clear from Annexure A14 annexed by the petitioner with the statement of claim.

23. The respondents having failed to prove that the petitioner was working on contract basis. So much so even the last contract has been not placed on record it can be inferred that the petitioner had been working uninterruptedly till his dis-engagement. The evidence discussed above also point to only this inference. Even if the respondent was dis-engaged as a surplus contractual workers as per the dictates of the letter dated 23rd of May, 2003 (Annexure A-14) the respondent was duty bound to have followed the principle of 'last come first go' as is envisaged under Section 25-G of the Industrial Disputes Act. Admittedly there were persons junior to the petitioner who were on the rolls of the respondent corporation at the relevant time. Not only this the respondent did not even resort to the statutory provisions of Section 25-F which is a condition precedent for retrenchment.

24. Even assuming the petitioner was being appointed on contract i.e. for a period of 85 days as is the case of the respondent, but the continuous engagement of the petitioner right from the year 1999 till the year 2003 shows that the engagement was uninterrupted and continuous. The petitioner had completed more than 240 days in each calendar year that too without a break. The respondent corporation thus was resorting to the process of issuing contractual appointments merely to frustrate the provisions of the Industrial Disputes Act. The action of the respondent itself was an "unfair labour practice" and as such the termination of the petitioner could not be protected even by virtue of Setion 2(oo) of the Act i.e. seeking the protection of the aforesaid contract, though the same has also not been strictly proved by the respondent corporation. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled Haryana State Electronics Development Ltd. vs. Mamni (AIR 2006 SC 2427).

25. From the aforesaid discussion it is crystal clear that the termination of services of the petitioner by the respondent corporation was in derogation to the mandatory provisions of Section 25-F and 25-G of the Industrial Disputes Act. The termination is thus held to be illegal. It is ordered to be set aside and quashed. As the sequel thereto the petitioner is ordered to be re-engaged on the same place and post. He shall be entitled to the benefits of seniority and continuity in service from the date of his illegal termination. Since the petitioner has failed to discharge the initial onus of proving that he was not gainfully employed during period of forced idleness. He shall not be entitled to any back wages. The issues are decided accordingly.

ISSUE No. 3

26. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable.

RELIEF

27. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. The petitioner is entitled to continuity and seniority in service from the date of his illegal termination, though except back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 15th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 202/2007
Date of Institution : 3.12.2007
Date of decision : 20.12.2010

Shri Jagdish Ram S/o Shri Suchha Ram, R/o Village & P.O. Nangran, Tehsil & District Una, H.P.
....Petitioner.

Versus

The Assistant Engineer, IPH Sub Division, Amb, District Una, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Jagdish Ram S/o Shri Suchha Ram workman by the Assistant Engineer, IPH Sub Division, Amb, District Una, H.P. w.e.f. 26.6.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. The petitioner has asserted in the claim that he was engaged as a beldar on daily wage basis on 1.5.2003. The petitioner worked with the respondents honestly, diligently and without any complaint from any quarter. However the respondents used to give intermittent and artificial breaks to the petitioner.

3. Despite having put in more than 240 days with the respondents his services were orally terminated without any notice w.e.f. 26.6.2004. The termination of the petitioner was in utter violation to the mandatory provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act (hereinafter referred to as the Act). At the time of his termination sufficient work and funds were available with the respondent department. The respondents had retained persons junior to the petitioner and also engaged fresh hands thereafter.

4. The petitioner thus claims his reinstatement from the date of his illegal termination with full back wages and all consequential benefits.

5. While contesting the claim the respondents have raised a preliminary objection of the reference being hopelessly barred by limitation.

6. On merits it is the case of the respondents that the petitioner was engaged as a daily rated beldar on muster roll basis as a casual worker subject to availability of work w.e.f. 5.5.2003. He worked for 173 days in the calendar year 2003 and 141 days in the calendar year 2004. It is denied that the work was continuous in nature. Per the respondents the engagement of the petitioner was subject to the availability of work and funds. It is denied that the breaks were given to the petitioner. The department is undertaking channelization of Swan river and as such the project is required to be executed according to its technical aspects which involves special skill levels and heavy machinery. The mandays chart of the petitioner has been annexed along with. It is denied that the respondent had violated the provisions of Section 25-F, 25-G and 25-H of the Act.

7. It is denied that juniors to the petitioner have been retained by the department. It is further averred that the petitioner was not terminated but he himself left work of his own will. It is thus prayed that the reference may be dismissed.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. I notice that on 12.6.2008 the following issues came to be framed by my Ld. Predecessor.

1. Whether the termination of services of the petitioner Waryam Chand by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation he is entitled to? OPP
2. Whether the petitioner had left the job on his own, if so, to what effect? OPR
3. Whether the application is barred by time. OPR
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : No
Issue No. 3 : No
Relief. : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

11. Both the issues are being taken up together for discussion as they are co-related and intermingled.

12. It is not disputed that the petitioner did not work with the respondent's w.e.f. 1.5.2003 till 26.6.2004. It is the case of the respondent that the petitioner had worked for 173 days in the calendar year and 141 days in the calendar year 2004. Per them the petitioner had never completed 240 days during any calendar year. It is further the case of the respondents that the petitioner was never terminated, but he left the work of his own sweet will. It is further denied that no juniors to the petitioner has been engaged by the department. One Bishan Dass was engaged on daily wage basis on compassionate grounds and that too on the directions of the Government as his real brother had died while in service. The said fact has been further deposed by one Shri Narender Mohan Saini, Executive Engineer, Flood Protection Division Gagret District Una while appearing as RW1.

13. The respondents have placed on record the mandays of the petitioner vide Ex.RW1/B. The perusal of the said mandays show that the petitioner had completed 240 days in the preceding 12 months of June, 2004. The petitioner had in fact completed 257 days. It is thus clear that the respondents had to resort to the mandatory provisions of Section 25-F before disengaging the petitioner. Admittedly no resort was taken to the provisions of Section 25-F, for it is the case of the respondents that the petitioner had not completed 240 days. The respondents inferred so because of their misconception that 240 days have to be reckoned in a calendar year, whereas the mandate of the Act is that the period of 240 days has to be reckoned in the 12 months preceding the alleged termination.

14. Though it is the case of the respondents that the petitioner had himself abandoned job but there is no evidence worth the name to remotely suggest so. By now it is fairly settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent.

15. Since the respondents having failed to prove the plea of abandonment by leading any cogent evidence it is to be inferred that the services of the petitioner were disengaged by the respondent department. The petitioner having completed more than 240 days it was the duty of the respondent to have issued the notice under Section 25-F of the Act. Admittedly it was not done. The termination of the petitioner is thus bad in the eyes of law, being in violation of the statutory provisions of Section 25-F. The termination of the petitioner is not legally sustainable and hence set aside. The infraction of Section 25-G and 25-H however is not made out from the record as Ex. PA and Ex. PB shows that no juniors to the petitioner have been retained by the respondent and nor any fresh hands had been appointed, except one Bishan Das who was however appointed on a compassionate grounds, after the death of his brother.

16. Both the issues are accordingly decided in favour of the petitioner and against the respondent.

17. Consequently the petitioner is ordered to be reengaged forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination. However seeing to the peculiar circumstances of the case and the fact that the petitioner has not worked during the said interregnum with the respondent, the petitioner shall not be entitled to any back wages.

ISSUE No. 3

18. No doubt the petitioner was terminated on 26.6.2004 the failure report was submitted by the conciliation officer on 11.1.2007. Some time could have been spent in the conciliation proceedings. There is no evidence as to how the claim was time barred and not maintainable. There is nothing on record to suggest that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram case (2007 LHLJ 903). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

> " …….. While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and

applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years….."

RELIEF

19. For all the aforesaid reasons discussed above the reference is allowed. The petitioner is entitled to be reengaged forthwith. He shall be entitled to seniority and continuity in service, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 20th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 59/2007
Date of Institution : 2.6.2007
Date of decision : 29.11.2010

Shri Jai Singh S/o Shri Narpat, R/o Village & P.O. Fanothi, Tehsil Ani, District Kullu, H.P. ….*Petitioner.*

Versus

1. The Managing Director, M/s. Lahoul Potato Growers Co-operative Marketting□cum□Processing Society Ltd. Manali, District Kullu, H.P.

2. The Registrar, Co□operative Societies, Government of H.P. Shimla, H.P. ….*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondents : Sh. R.L. Kaith, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the action of the (1) Managing Director, M/s. Lahoul Potato Growers Co□operative Marketting-cum-Processing Society Ltd. Manali, District Kullu, H.P. (2) The Registrar, Cooperative Societies, Government of H.P. Shimla-9 to give break in service to Shri Jai Singh S/o Shri Narpat workman during his service period time and again and finally terminated w.e.f.17.11.1999 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In furtherance to the reference, the case set out by the petitioner in brief is that he was engaged as a daily waged workman on muster roll basis on 10.1.1990.

3. The employer society was indulging in unfair labour practices and as a sequel thereto the daily wagers had formed a Union known by the name of L.P.S. Mazdoor Sangh. They had issued a demand notice on 2.6.1999, followed by a reminder on 13.7.1999. During the pendency of the said demand the services of the petitioner and other workmen, who were the members of the Union was illegally retrenched, though there was sufficient work available with the respondent.

4. The services of the petitioner was terminated on 17.11.1999 without any notice and compensation, oblivious of the fact that the petitioner had completed more than 240 days in each calendar year.

5. It is also averred by the petitioner that the employer had been giving fictional and illegal breaks to the petitioner without any fault on his part. The respondents even retained persons junior to the petitioner namely Santosh Kumari, Maheshwar Singh, Vikash, Balbir, Ravinder Singh etc. The respondents had also engaged new hands but the petitioner was never offered any opportunity of reengagement.

6. The petitioner thus seeks that his oral termination on 17.11.1999 be set aside and quashed. He may be directed to be reengaged along with back wages and all other consequential benefits.

7. While contesting the claim the respondent No.2 has not filed any reply and nor contested the claim. The respondent society has however raised the preliminary objections that the society having being registered under the H.P. Cooperative Societies Act, 1968 the claim was without jurisdiction and that the petitioner having been appointed for a specified period the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) were not attracted in the present case.

8. On merits it is the case of the respondent society that the work with the society is of a seasonal nature. In order to meet the requirements of the society the workmen are engaged on seasonal basis or a specified period. These workmen are disengaged in accordance with law on the culmination of the potato season. It is further averred by the respondent that the services of the petitioner were not dispensed with a malafide intention or vindictive attitude. It was after the culmination of the potato season that the petitioner was eased out with an assurance that he would be reengaged during the next season. The petitioner was recalled in the next season but he did not join. The workmen were stated to have not been retrenched within the meaning of Section 2(oo).

9. The respondent further averred that the petitioner was always appointed for a specified period and not on regular basis. On culmination of the specified period the services of the petitioner stood automatically terminated and as such the compliance of the provisions of Section 25-F of the Industrial Disputes Act does not arise. The petitioner was engaged intermittently on seasonal basis or specified period of work. It is denied that the petitioner had completed days during the preceding 12 months of his disengagement.

10. As per the respondents the petitioner had been offered due opportunity on opening of the potato season in the year 2000, for a period of 89 days, but, he did not report for duty. Consequently certain workmen namely Santosh Kumari, Maheshwar Singh, Vikash and Balbir had to be reengaged for 89 days. It is thus averred that the petitioner is not entitled to any relief claimed by him.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 6.1.2009 the following issues came to be framed by my ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent 1 is unlawful. If so, what relief of service benefits the petitioner is entitled to? OPP
2. Whether the respondent 1 had been giving fictional breaks in the services of the petitioner without any fault on his (petitioner) part. OPP
3. Whether the work of M/s. Lahaul Potato Grower's Cooperative Marketting-cum-Processing Society Ltd. Manali, Distt. Kullu, H.P. is of seasonal nature and the petitioner was engaged intermittently on the seasonal basis for a specific period. If so, to what effect. OPR
4. Whether the petitioner's removal from service does not fall within mischief of section 2(oo) of the Industrial Disputes Act, 1947. OPR
5. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : Yes
Issue No. 3 : No
Issue No. 4 : No
Relief : Allowed as per operative part part of the award.

REASONS FOR FINDINGS

ISSUES No. 2, 3 AND 4.

14. All the three issues being intermingled and co□related are taken up together for discussion.

15. Before considering the question of termination it would be apposite to first and foremost consider the question of the nature of the engagement i.e. whether the engagement was seasonal or intermittent in nature the breaks given thereupon were fictional or not.

16. The case set up by the petitioner simplicitor is that he was appointed for 89 days and thereupon given fictional breaks. He was however again reemployed for 89 days and the process continued as such w.e.f. 10.1.1990 till 17.11.1999 when his services were eventually disengaged.

17. On the contrary the respondent has portrayed that the work available with them is seasonal in nature. The workman are engaged by the society on seasonal basis for a specified period i.e. during the potato season and thereafter the workmen are disengaged. The petitioner as such had been engaged intermittently on seasonal basis for specified period of 89 days in accordance with the exigency of work.

18. In order to substantiate the plea so raised by the petitioner he has appeared as his own witness, PW1. The petitioner has reiterated the stand taken by him in the statement of claim. He has also further placed on record the muster rolls issued to him w.e.f. October, 1994 to January, 1998 as Ex. PA-1 to Ex. PA-35.

19. On the other hand the respondents have examined the Managing Director Sh. Nawang Bodh as RW1 in order to substantiate their contention. The Managing Director of the society who has appeared as RW1 has deposed that during the potato season the society engages need based workmen for a specified period on daily wages every year. Likewise the petitioner had been engaged by the society and his services had come to an end on completion of the specified period of his employment. He was appointed on daily wages without asking for a requisition from the employment exchange. Since the petitioner had not completed 240 days during the preceding 12 months of his termination no notice was required to be served on him. Even assuming the petitioner had completed 240 days even then, he cannot claim reinstatement since the petitioner had been appointed dehors appointment rules i.e. without notifying the vacancy through the employment exchange. The respondent witness has also placed on record one office order dated 24.1.2007 and a resolution of the society dated 17.1.2007 whereby the allowances of the employees of the society have been ordered to be frozen.

20. Though the respondents have taken a categorically stand that the petitioner was appointed for seasonal work and that too during the potato season and that after the specified period the services of the petitioner had automatically come to an end. But it is also not denied by the respondent that the petitioner used to offer appointment for 89 days by issuing office orders. The petitioner has placed on record all the muster rolls whereby he was offered appointment between September, 1994 till January, 1998. The same have been placed on record as Ex. PA-1 to PA-Ex. PA-35. A bare glance at the documents on record show that the petitioner had been offered appointment uninterruptedly atleast from September, 1994 till his termination on 17.11.1999. The letters on record show that except for giving a break of a day or so the petitioner was invariably offered appointment for 89 days continuously. As per the appointment letters on record invariably after about 89 days the petitioner was offered appointment continuously from 10.1.19905 till 17.11.1999. The plea and testimony of the respondents that the petitioner had been engaged only for work in the potato season is thus falsified and belied by their own documents issued to the petitioner. Nothing to the contrary has been proved on record by the respondent. Rather, tacitly the respondent had admitted that the petitioner was appointed for 89 days by way of the appointment letters on record.

21. Not only this the documentary evidence on record as discussed above clearly shows that the petitioner had completed more than 270 days in the 12 months preceding his termination. Thus, even otherwise it cannot be inferred that a person having worked for more than 270 days was a seasonal worker. It is thus clear that even the intention of the respondents themselves was not such as to engage the petitioner for a specified period, as alleged. Apparently it seems to be a ploy to defeat the rights of a workman as envisaged under the provisions of Industrial Disputes Act, more particularly the provisions of Section 25-F thereto. The aforesaid practice of the respondents to employ the petitioner uninterruptedly, but for 89 days each clearly falls within the ambit and scope of unfair labour practice and as such it cannot even be said that the petitioner's removal from service is protected under Section 2(oo) of the Industrial Disputes Act. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled Haryana State Electronics Development Ltd. vs. Mamni (AIR 2006 SC 2427).

22. Strangely the respondent society has raised a plea that since the engagement of the petitioner is dehors the appointment rules the subsequent disengagement was legal. Even if he has completed 240 days in the preceding 12 months it cannot claim reinstatement. The aforesaid plea in fact has not been raised in the reply filed by the society. It has been raised by the Managing Director who has appeared a RW1 while appearing as his own witness. However

nothing has been produced on record to show as to what were and are the appointment rules governing the society. It is thus sought to be portrayed that since the petitioner was not engaged through employment exchange their initial engagement is bad in the eyes of law.

23. Though this ground was never taken by the respondents in their pleadings and as such the petitioner could not have been taken unaware that is without affording opportunity to the petitioner to explain the circumstances. But the fact remains that the respondents have even miserably failed to place on record the rules governing appointments in the society and as such the bald statement of RW1 cannot be believed that the appointment itself was dehors the rules. Even otherwise the appointment of the petitioner was on daily wage basis. It has been made after the concurrence of the board of directors though for 89 days. The initial engagement, thus, also cannot be said to be in violation of any rule as none but the board of directors had agreed to the appointment of the petitioner.

24. The ld. counsel for the respondents to buttress his contention that because of the illegal appointment of the petitioner the protection of the provisions of Section 25-F cannot be granted to the petitioner has placed reliance on a judgments of the Hon'ble Punjab and Haryana High Court titled as Chief Engineer, RSD, Irrigation Works and Anr. vs. Suresh Kumar (2009 (1) SCT 163) and Divisional Forest Officer vs. Mangat Ram & Anr. (2009 (1) SCT 62), a judgment of Hon'ble Supreme Court titled as Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh and Ors. (2007) 2 SCC (L&S) 441 and Accounts Officer (A&I) APSRTC and Ors. vs. K.V. Ramana & Ors. (2007 (3) SLR 440). Since the respondents have failed to prove that the appointment of the petitioner was against the recruitment rules of the respondents society the ratio laid by the Hon'ble Punjab and Haryana High Court in Suresh Kumar and Mangat Ram's case discussed hereinabove supra do not come to the rescue of the respondent.

25. The ratio of the K. V. Ramana and Dan Bahadur Singh's case also does not apply to the facts and circumstances of the present case as admittedly by now it is well settled that long working period cannot be regularized dehors the rules. The present case does not pertain to regularization, and in any case regularization if any has to be subject to the availability of post and policy thereupon in respect of regularization. Per se the petitioner cannot claim for regularization even after having put in long and uninterrupted service with the respondents. Nonetheless the aforesaid ratio does not apply to the facts and circumstances of the present case. For all the reasons discussed above it is to be held that the petitioner was not appointed for seasonal work and that too intermittently. The respondent in fact had been giving fictional breaks to the petitioner after every 89 days to frustrate the provisions of Section 25-F of the Act, though they continued employing the petitioner uninterruptedly from 1.8.1995 till 22.4.1999. In view of the matter it cannot further also said that the termination of the petitioner was protected by the provisions of Section 2(oo) of the Industrial Disputes Act. All the three issues are decided in favour of the petitioner and against the respondents.

ISSUE No. 1

26. Now reverting back to the core issue as to whether the termination of the petitioner by the respondent no.1 was unlawful or not, suffice it to say that for the reasons recorded in relation to the issues no.2, 3 and 4, discussed hereinabove supra it is clear that the petitioner has completed more than 240 days in the preceding 12 months of his termination. The discussion held hereinabove points to only this conclusion. The documentary evidence on record more particularly Ex. PA-1 to Ex. PA-35 further falsifies the claim of the respondent and provides support to the case set up by the petitioner.

27. The case set up by the petitioner is further fortified by Ex. PA-37 and PA-38 whereby the petitioner and the other workmen had raised a demand charter before the respondents and which apparently led to the termination of the petitioner. The said fact is very candidly and categorically admitted by the Managing Director of the respondent society while appearing as RW1. In his cross-examination he has admitted that the petitioner and other workmen had formed a workers union and offended by the same their services have been dispensed with by the society. Even if that were so the respondent society was under a legal obligation to have atleast resorted to the provisions of Section 25-F of the Industrial Disputes Act and thereupon disengage the services of the petitioner. No such steps were taken by the respondent society. The petitioner having worked uninterruptedly from 10.1.1990 till 17.11.1999 and having completed more than 240 days immediately preceding 12 months of his termination was entitled to the protection of the Act. Not only this, the respondent has even otherwise flagrantly violating the provisions of the Industrial Disputes Act by offering appointment to the petitioner for 89 days and thereupon giving him fictional breaks to merely deprive him of his legal rights envisaged under the Industrial Disputes Act. It was nothing but an act of unfair labour practice. Apparently and as has been categorically admitted by the Managing Director the petitioner and the other workmen had been shown the door for having raised an union and a demand under the provisions of the Industrial Disputes Act. The termination of the petitioner thus cannot be sustained in any manner. Consequently the termination of the petitioner is held to be illegal. It is set aside and quashed. The respondent is directed to reengage the petitioner at the same place and post forthwith. The petitioner shall be entitled to continuity and seniority in service from the date of his illegal termination.

28. Though the petitioner has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness but seeing to the financial health of the society, as is reflected per Ex. RW1/B and Ex. RW1/C it seems to be dismal. I do not think it just and proper to award back wages to the petitioner. Nonetheless seeing to the fact that the respondents had flagrantly violated the provisions of the Industrial Disputes Act and had been rather trying to defeat the provisions of the Act as has been discussed hereinabove it is ordered that the respondent shall pay an amount of Rs.25,000/- to the petitioner as lump sum compensation in lieu of the back wages. The issue decided accordingly.

RELIEF

29. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. He is entitled to continuity and seniority in service from the date of his illegal termination. The petitioner is also entitled to Rs.25,000/- as lump sum compensation in lieu of back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 29th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 249/2009
Date of Institution : 7.3.2009
Date of decision : 26.11.2010

Shri Jindu Ram S/o Shri Kesru Ram, R/o village Gallue, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Jindu Ram S/o Shri Kesru Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex- Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on April, 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged

that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No

Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
>
> (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub□section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.*—For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on April, 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount

of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1268/07-592, dated 6.02.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated February 26, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 50/2009

Date of Institution : 26.2.2009
Date of decision : 26.11.2010

Shri Joginder Pal S/o Shri Sohan Lal, R/o Village Koha, P.O. Sajao Piplu, Tehsil Sarkaghat, District Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Joginder Pal S/o Shri Sohan Lal, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent in the year 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief

Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means—
(a) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(b) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(c) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non□existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
> (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
> (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
> (2) An application for permission under sub□section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
> (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
> (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief

Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.*—For the purposes of thisChapter,-
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock□out or a cessation of work which is not due to any fault on the part of the workman;
>
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (3) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No. LO/MZ/IV/ID/154/06 & 964/2007-10000, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 10, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the

redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000- as lump sum amount in lieu of back wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 615/2008
Date of Institution : 29.10.2009
Date of decision : 26.11.2010

Smt. Jogindera Devi W/o Shri Bhag Singh, R/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ….*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Smt. Jogindera Devi W/o Shri Bhag Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent in 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to her namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by her act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay□off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub□section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non□existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/A-1 is ex-facie illegal.

21. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed in 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter-alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Kumar S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after her retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer, HPPWD, Dharampur vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 925/2007-9231, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated August 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 587/2008
Date of Institution : 29.10.2008
Date of decision : 26.11.2010

Smt. Kamali Devi W/o Shri Sohan Singh, R/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .*Respondent.*
Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

> **"Whether retrenchment of services of Smt. Kamali Devi W/o Shri Sohan Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, *w.e.f.* 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"**

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent in 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and her services were dispensed with illegally *w.e.f.* 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to her namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by her act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-*cum*-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:—

1. Whether the retrenchment of the petitioner under Section 25- N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? . .OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? . .OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? . .OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? . .OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under.—

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means.—

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-
(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on

which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/A-1 is ex-facie illegal.

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"25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-
(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

 (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

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23. The petitioner in paragraph 3 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed in 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Kumar S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after her retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer, HPPWD, Dharampur vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was

considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held: "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh *v.* Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 921/2007-9230, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated July 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4 :

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 158/2006
Date of Institution : 2.11.2006
Date of decision : 20.11.2010

Smt. Kamla Devi W/o Shri Karam Singh, R/o Village Sharan, P.O. Bagsaid, Tehsil Thunag, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Nachan Forest Division at Gohar, District Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Pankaj Thakur, Adv.
For the Respondents : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication: "Whether the termination of services of Smt. Kamla Devi W/o Shri Karam Singh workman by the Divisional Forest Officer, Nachan Forest Division Gohar, District Mandi, H.P. *w.e.f.* 21.4.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. The case set out by the petitioner in brief is that she was engaged as a beldar on daily wages by the respondent and posted at forest nursery Bajahi w.e.f. 1.11.1998 to 24.5.2001. On 25.5.2001 the services of the petitioner were dispensed with without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. The petitioner had initially approached the Hon'ble Administrative Tribunal vide O.A. No.250 (M) of 2001. In pursuance thereto the respondent had paid wages to the petitioner w.e.f. 1.5.2001 to 24.5.2001, however the interim application was dismissed for want of jurisdiction with liberty to the petitioner to approach the appropriate forum. The petitioner thus prays for her reengagement with all consequential benefits.

4. While contesting the claim the respondents have raised the preliminary objection of the claim being time barred and the petitioner having not approached the Court with clean hands.

5. It is further averred by the respondents that the petitioner was engaged as a daily wage casual labourer in Bajahi nursery and she worked intermittently since 1.11.1998 to 20.4.2001. It is denied that the petitioner had worked in May, 2001 i.e. 1.5.2001 to 24.5.2001 with the forest department. As per the respondents she had worked with Village Forest Development Society under Sanjhi Van Yojna. It is denied that the respondent had disengaged the services of the petitioner. Per them she had left work at her own will after 20.4.2001. The same is the case set out by the respondents on merits.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 7.11.2007 the following issues had came to be framed by my ld. Predecessor.

1. Whether the disengagement from service of the claimant by the respondent is proper and justified? OPP
2. If the above issue no.1 is proved in the affirmative to what relief of service benefits the petitioner is entitled to? . .OPP
3. Whether the claim petition is time barred, if so its effect? . .OPR
4. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No
Issue No. 2 : As per operative part of the award.
Issue No. 3 : No
Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2.

9. Both the issues are taken up together for discussion as they are intermingled and co-related.

10. While contesting the plea of disengagement the respondents have set a plea that the petitioner was an intermittent worker and in May, 2001 she had worked with the Village Forest Development Society under the Sanjhi Van Yojna and as such was not terminated by the respondent. It is further the case of the respondent that the petitioner had abandoned job after 20.4.2001.

11. The reference in question pertains to the termination of the petitioner w.e.f. 21.4.2001. Even assuming that the petitioner was working in the Sanjhi Van Yojna in the month of May the facts remains that prior to May, 2001 the petitioner had been admittedly working with the respondents at forest nursery Bajahi. It is not even disputed by the respondents. They have placed on record the mandays of the petitioner as Annexure R-1 along with the reply. A bare glance at the mandays chart show that the petitioner had completed 250 days in the preceding 12 months of her termination i.e. prior to 21.4.20011. The plea of the respondents that the petitioner was an intermittent worker is also falsified by the mandays as she had worked continuously and uninterruptedly w.e.f. November, 1998 till April, 2001. During the entire period the petitioner was absent only for three months, but still completed more than 240 days in each year.

12. The respondents have further raised a plea of abandonment. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent.

13. The respondent having failed to prove the plea of abandonment it is apparent that even after the petitioner had completed more than 240 days, no steps were taken by the respondent to issue any notice to the petitioner as per the requirement of the provisions of Section 25-F of the Act.

14. Moreover, as is apparent from the seniority list placed on record vide Ex. RW1/C innumerably person juniors to the petitioners have been retained by the respondents. Since the respondents have failed to prove the plea of abandonment it is to be inferred that the respondents terminated the services of the petitioners. Since the respondents failed to abide by the provisions of Section 25-G also, which enunciates the basic principle of 'last come first go' the termination of the petitioner has to be held illegal. It is by now again well settled that for the invocation of the rights granted by the Section 25-G, the requirement of having completed 240 days in the preceding 12 months of the termination is not required. In this behalf support can be drawn by the judgment of the Hon'ble Supreme Court titled as Central Bank of India vs. S. Satayam, (1996 (5) SCC 419). To this limited extent the termination of the petitioners is bad.

15. The respondents have not only failed to prove the plea of abandonment but have also failed to comply with the mandatory provisions of Section 25-F whereby it was an obligation of the respondents to have served a notice on the petitioner vis-à-vis her disengagement as she had completed more than 240 days uninterruptedly in the preceding 12 months of her termination. Rather she was put on a scheme, thereby frustrating the provisions of the Industrial Disputes Act. The act of the respondent is illegal, void and against the provisions of the Industrial Disputes Act. It is consequently set aside and quashed.

16. As a sequel thereto the petitioner is ordered to be reinstated forthwith. Seeing to the peculiar circumstances of the case and more so that the petitioner has failed to discharge the initial onus of proving that she was not gainfully employed during the forced idleness the petitioner shall not entitled to any back wages. She is however entitled to seniority and continuity of service from the inception of her termination. The issues are decided in the aforesaid terms.

ISSUE No. 3

17. From the perusal of the reference it transpires that the Labour Officer had referred the dispute to the appropriate Govt. in the year 2005. Keeping in view the procedural maze through which the process has to go, it can well be presumed that the industrial dispute was raised somewhere in the year 2003-2004. No doubt a period of 3-4 years had elapsed by then, but seeing to the mandate of the provisions of the Act and the law lay down by the Hon'ble Supreme Court and the Hon'ble High Courts it is clear that the aforesaid delay may not be fatal for the petitioners.

18. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

> " …….. While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years….."

19. Not only this our own Hon'ble High Court has further gone on to hold that the Labour Court cannot dismiss the claim on the ground of delay and latches once the same have been referred to this Court by the State Government. The Court can only take into consideration the delay at the time of granting the main relief. In a case titled as Naginder Kumar –vs-HPSEB (CWP No.885 of 2007 decided on 1-11-2007), it has been held thus.

RELIEF

20. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. She is ordered to be reengaged forthwith along with seniority and continuity in service, though except back wags. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 20th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 86/2006
Date of Institution : 16.5.2006
Date of decision : 4.12.2010

Smt. Kamti Devi W/o Shri Jagat Ram, R/o Village Sen-Ropru, P.O. Surwari, Sub Tehsil Kotli, Distt. Mandi, H.P. . .*Petitioner.*

Versus

The Chief Medical Officer, Mandi, Distt. Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondents : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> **"Whether the termination of services of Smt. Kamti Devi W/o Shri Jagat Ram workman by the Chief Medical Officer, Mandi, Distt.Mandi, H.P. w.e.f. 24.8.1999 without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to her retained as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"**

2. The case set up by the petitioner in her statement of claim, in furtherance to the reference is that she had undergone the training of a midwife from an Institute recognized by the Himachal Pradesh Nurses Registration Council in the year 1997. After having successfully completed the training the petitioner was appointed as a daily waged midwife (Dai) on 9.9.1997 at Primary Health Centre, Gohar, District Mandi, H.P. She worked as such continuously till 23.8.1999.

3. The respondent terminated her services orally and without any notice on 24.8.1999.

4. The petitioner had approached the Hon'ble Administrative Tribunal for reengagement vide O.A. No.2800/2000 and O.A. No.361/2002 but the same were dismissed for want of jurisdiction with liberty to approach the competent forum. Consequently the petitioner had raised an industrial dispute on 4.4.2005.

5. It is further the case of the petitioner that the respondent has appointed seven Daies on 1.2.2005 whereas the petitioner has not been afforded any opportunity for offering her services. The said act of the respondent is stated to be violative of the provisions of Section 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The termination of the petitioner is otherwise stated to be violative of the provisions of Section 25-F of the Act.

6. The petitioner thus claims reengagement along with all consequential benefits.

7. While contesting the claim the respondent has admitted that the petitioner had undergone training and completed a course of midwife (Dai) in the year 1997 and the name of the petitioner is registered with the Himachal Pradesh Nurses Registration Council, Shimla. It is further admitted by the respondent that the petitioner was appointed as a Dai in the year 1997. The respondent however dispute that the petitioner had worked continuously as such till 23.8.1999. Per the respondent the petitioner was actually appointed for 89 days. After 89 days her services were terminated automatically and thereafter she was appointed afresh as per the details given below: 9.9.1997 to 6.12.1997= 89 days 20.12.1997 to 18.3.1998 = 89 days 27.5.1999 to 23.8.1999 = 89 days

8. As per the respondent the petitioner had never completed 240 days in a calendar year. Further per the respondent the services of the petitioner were not terminated but it came to an end automatically on 23.8.1999 after a period of 89 days for which she had been appointed by the respondent. Thereupon for lack of funds the petitioner was not offered any appointment.

9. In respect of O.A. No.2800/2000 it is averred by the respondent that the same had been ordered to be treated as a representation to the respondent no.1, while the O.A. No. 361/2002 was dismissed as withdrawn with liberty to the petitioner to avail appropriate remedy as per law.

10. It is further admitted by the respondent that in February, 2005 seven new Daies were appointed on contract but as per the respondent the petitioner is not eligible for appointment on contractual basis as she does not fulfill the eligible criteria of having passed the 8th standard examination. It is admitted that six posts out of 34 posts of midwife is lying vacant with the respondent. It is thus prayed that the reference be dismissed.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 18.2.2008 the following issues had come to be framed by my ld. Predecessor.

1. Whether the disengagement from the service of the petitioner by the respondent is proper and justified? . .OPP
2. If the above issue is proved in affirmative to what relief of service benefit the petitioner is entitled to the respondent. . .OPP
3. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No

Issue No. 2 : Yes, as per operative part of the award.

Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2.

14. Both the issues are taken up together for discussion as they are intermingled and co-related.

15. Admittedly the petitioner is registered with the Himachal Pradesh Nurses Registration Council after having undergone a course of training as a Dai. It is also not in dispute that the petitioner had come to be appointed initially vide Ex.RW1/B on 4.9.1997 for a period of 89 days, which was further extended for another period of 89 days vide Ex.Rw1/C on 19.12.1997 and eventually on 17.5.1999 vide Ex. RW1/C.

16. It is further the case of the respondent that since she was given breaks between the appointments offered for 89 days the petitioner had not completed 240 days in any calendar year. However the perusal of Ex. RW1/D

(inadvertently two documents have been exhibited as Ex. RW1/D, one being the appointment of the petitioner for 89 days and 17.5.1999 and other being a letter dated 18.10.2004 regarding filling up 45 posts of midwife on contract basis) show that the appointments offered to the petitioner even for 89 days was in continuation of the earlier appointment offered to the petitioner. It is thus more than clear that even while offering appointment to the petitioner for 89 days at a stretch the respondent intended to avail the services of the petitioner uninterruptedly and she did work continuously till her termination on 24.8.1999. Even otherwise, as per law holding the field the question of 240 days is to be reckoned from the preceding 12 months of the petitioner and not as per the calendar year, as has been espoused by the respondent. The modus operandi adopted by the respondent to appoint the petitioner for 89 days only shows that the said exercise was conducted primarily to frustrate the provisions of Industrial Disputes Act. No doubt the petitioner continued to be appointed after each spell but the respondent ensured that there was substantial time gap between her fresh appointments. Even assuming it was so, it was at best red tapism, as the perusal of the annexures show that the appointments were made in continuation of references made well in time by the department. However the concurrence from the Secretary Health was received late. However, the fact remains that the purpose of issuing successive appointments was to ensure continuity in the working of the petitioner at Primary Health Centre, Gohar. In that sense of the matter even if all three appointments for 89 days are kept in consideration the petitioner had completed around 267 days with the respondent. The breaks in between can very safely be said to be fictional breaks. The said breaks were given intentionally, with a purpose to frustrate the rights of the petitioner. The respondents admittedly have appointed Dai's in the year 2005. Per the respondent even the petitioner had been called for interview but she was not offered appointment as she did not fulfill the requisite qualification fixed by the department at the time of recruitment. No such a rule was in existence at the time the petitioner had been appointed as is clear from Ex. RW1/B but the said rule came into force in August, 2004. The petitioner having been appointed on daily wages in the year 1997, had she continued she would have become entitled of regularization after a stipulated period, as per the policy of the State. Be it as it may, the said question is not open for consideration before this Court in the present reference.

17. However, the fact remains that the petitioner had been working with the respondent at the time of her engagement as per the terms and conditions settled by the State as is clear from the Ex.RW1/B. The terms and conditions had been specifically enumerated in the appointment letter. As has been held above the breaks granted to the petitioner were fictional in nature. The practice of the respondent to employ the petitioner continuously, but for 89 days, clearly false within the ambit and scope of "unfair labour practice" and as such it cannot even be said that the petitioner's removal from service was protected under Section 2(oo) of the Industrial Disputes Act. Even otherwise the Hon'ble Supreme Court in Haryana State Electronics Development Ltd. vs. Mamni (AIR 2006 SC 2427) has deprecated such a course as was adopted by the respondent to employ workmen for 89 days.

18. It is thus to be held that the disengagement of the petitioner from service by the respondent was not in consonance with the provisions of the Industrial Disputes Act and her services were not even liable to be terminated automatically as per the contract and as such the action of the respondent was not liable to the protection of Section 2(oo) of the Act. Consequentially the termination of the petitioner w.e.f. 24.8.1999 is set aside and quashed. The petitioner is ordered to be reengaged forthwith as a Dai. She shall be entitled to continuity in service and seniority w.e.f. her date of illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the subsequent rules have changed the essential requirements of selection and the petitioner has not worked with the respondent during the said interregnum, she shall not entitle to any back wages. The issues are decided accordingly.

RELIEF

19. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. She is ordered to be reengaged forthwith along with seniority and continuity in service, though except back wags. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 4th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 652/2008

Date of Institution : 29.12.2008
Date of decision : 26.11.2010

Shri Kanshi Ram S/o Shri Mohan Lal, R/o Village Kalswayi, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Kanshi Ram S/o Shri Mohan Lal by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex- Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on November, 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief

Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:—

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? . .OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? . .OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect?. .OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? . .OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:—

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen
(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made

should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,—
>
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on November, 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The

provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held: "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No. 9245, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P. (CAMP AT MANDI)

Ref No. : 15/2003
Date of Institution : 3.2.2003
Date of decision : 21.12.2010

Shri Kapil Dev S/o Shri Dhani Ram, R/o Village Olinal, P.O. Nishani, Tehsil Nirmand, Distt. Kullu, H.P.
. .*Petitioner.*

Versus

The Executive Engineer, S.D.O. IPH Sub Division Nirmand, Distt. Kullu, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"क्या श्री कपिल देव सपुत्र श्री धनी राम दैनिक वेतन भोगी बेलदार को एस0 डी0 ओ0 आई0 पी0 एच0 उप–मण्डल निरमण्ड, जिला कुल्लू द्वारा मार्च, 1999 से औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित व न्याय संगत है? यदि नहीं तो कामगार किस राहत, पूर्व वेतन, वरिष्ठता सेवा लाभ एवं क्षतिपूर्ति का हकदार है?"

2. The petitioner asserts in his statement of claim that he was engaged by the respondents in the year 1990 as daily waged beldar and he worked as such till March, 1999. His services were terminated orally and without any notice thereupon. The petitioner had completed more than 240 days in the 12 months preceding his termination.

3. It is further the case of the petitioner that the respondents had retained juniors to the petitioner namely Naya Ram S/o Shri Sesh Ram, Uttam, Mohinder Pal S/o Shri Keshav Ram, Smt. Kala Devi, Kishnu Devi, Lal Das and others still working with the respondent.

4. The termination of the petitioner is further stated to be in violation of the provisons of Section 25-F, 25-G and 25-H of the Industrial Disputes Act (hereinafter referred to as the Act). The petitioner thus prayed that he be reengaged in service with all consequential benefits including back wages.

5. While controverting the averments in the statement of claim the respondents have averred that the petitioner was engaged in January, 1990 and he worked intermittently on his whims till February, 1999. The petitioner worked for 177 days in 1990, 128 days in 1991, 45 days in 1993, 325 days in 1994, 34 days in 1995, 262 days in 1996, 217 ½ days in 1997, 143 days in 1998 and 48 days in 1999. Per the respondents the petitioner had not worked for 240 days in any calendar year except the year 1994 and 1996. The services of the petitioner were dis-engaged along with many other workers w.e.f. March, 1999 on the basis of 'last come first go', due to paucity of work in the absence of sufficient funds. The persons named by the petitioner in his statement of claim were working continuously with the respondents having completed more than 240 days in each calendar year and as such they were senior to the petitioner. The services of the petitioner had been discontinued w.e.f. March, 1999 strictly on the basis of 'last come first go'. It is thus prayed that the reference be dismissed.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 16.6.2009 the following issues came to be framed by my Ld. Predecessor.

1. Whether the termination of the services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . .OPP
2. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Relief. : Allowed as per operative part of the award

REASONS FOR FINDINGS

ISSUE No. 1

9. While contesting the claim it is the case of the respondents that the services of the petitioner were dispensed with along with other surplus workers on the principle of 'last come first go'. The respondents had issued no notice under Section 25-F of the Act as the petitioner had not completed 240 days as is also apparent from the mandays annexed by the respondents. The dispute thus primarily hinges around the infraction of the provisions of Section 25-G of the Act.

10. Admittedly the petitioner was engaged in the year 1990. He continued working with the respondents till the year 1999, when his services were dispensed with along with other surplus workers, for want of funds, as is the case of the respondent.

11. The respondents have placed on record the seniority list of beldars in respect of I&PH Division Anni district Kullu. The original record had been summoned at the time of arguments which had been brought by Sh. Ashok Bhupal, SDO, I&PH Sub Division Nirmand. The perusal of the seniority list on record and the record shows that the respondents had engaged workmen till the year 1997. The Executive Engineer, I&PH Division Anni Sh. Keshav Ram

Kulvi who has appeared as RW1 has also categorically admitted that the persons named in para no.1 of the reply were engaged by the respondent after the year 1993 and many of them have since been regularized.

12. The provisions of Section 25-G of the Industrial Disputes Act inter alia postulate that where any workman is to be retrenched, the employer shall ordinarily retrench the workman who was the last person to be employed in that category. Admittedly per the respondents the petitioner was dis-engaged in the year 1999 for want of work and funds along with other surplus labourers. If that is so the workers engaged by the respondents in the year 1997 were the first to have been retrenched. The seniority list on record shows that the persons junior to the petitioner were allowed to continue whereas the petitioner was shown the door. The provisions of Section 25-G were thus given a blatant go bye by the respondent. It is against the mandate of the provisions of Section 25-G of the Act. It is now fairly settled that the protection of Section 25-G is available to all retrenched workmen i.e. whether they have completed 240 days or not. Even assuming the petitioner had not completed 240 days, the protection of the provisions of Section 25-G was still available to the petitioner. The action of the respondents in no extending the aforesaid benefit to the petitioner is thus illegal and void in the eyes of law. In this behalf reference can ably be made the ratio of judgment laid down by the Hon'ble Supreme Court reported in Central Bank of India vs. S. Satayam, (1996) 5 SCC 419.

13. The termination of the petitioner thus is held to be unlawful, being against the provisions of Section 25-G of the Act which is mandatory in nature. In those circumstances the issue is decided in favour of the petitioner. Consequently he is ordered to be re-engaged. He shall be entitled to continuity in service and seniority from the date of his illegal termination. Seeing to the peculiar circumstances of the case and the facts that the petitioner had been working intermittently I do not deem it just and proper to award the back wages to the petitioner. The issue is decided accordingly.

RELIEF

14. For all the aforesaid reasons discussed above the reference is allowed. The petitioner is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity in service, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 320/2009
Date of Institution : 30.5.2009
Date of decision : 26.11.2010

Smt. Kaula Devi W/o Shri Shayam Lal, R/o Village Lahehed, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. . .*Petitioner*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Smt. Kaula Devi W/o Shri Shayam Lal by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent in 1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to her namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by her act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25- N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? . .OPP

2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? . .OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? . . .OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? . .OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:—

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof.—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.* (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
>
> (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
>
> (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
>
> (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
>
> (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
>
> (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him." 18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/A-1 is ex-facie illegal.

21. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(a) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(b) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(c) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed in 1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Kumar S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after her retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer, HPPWD, Dharampur vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1147/07-796, dated 8.2.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated March 12, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy. D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 43/2006
Date of Institution : 20.3.2006
Date of decision : 20.11.2010

Shri Keshav Ram S/o Shri Rohala Ram, R/o Village Bhela, P.O. Ghamiru, Tehsil Ladbharol, District Mandi, H.P. . .*Petitioner*

Versus

The Superintending Engineer, HPSEB, Division, Joginder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.
For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondents : Sh. J.S. Chauhan, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Sh. Keshav Ram S/o Shri Rohala Ram workman by the Superintending Engineer, HPSEB Division, Joginder Nagar, Distt. Mandi w.e.f. 15.8.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In pursuance to the reference it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar on 25.11.1986 and his services were illegally retrenched w.e.f. 15.8.2001 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and Rule 14(2) of the Certified Standing Orders of the Boards.

3. The respondents had sufficient work but still the respondent was giving artificial breaks to the petitioner. His services were illegally terminated w.e.f. 15.8.2001. The juniors to the petitioner were allowed to work and the respondents did not follow the principle of 'first come last go' and thereby violated the provisions of Section 25-G of the Act. The respondents have retained juniors like Molak Ram S/o Sh. Ram Lal, Dalip Singh, Damodar Dass, Vijay Kumar etc. They were even allowed to complete 240 days in each year. It is further averred by the petitioner that even when fresh hands were engaged the respondent did not resort to the provisions of Section 25-H of the Act. The respondents have also not maintained the seniority list of all the workmen in the division in order to comply with the principle of 'first come last go'.

4. The petitioner thus seeks his reinstatement with all consequential benefits.

5. While contesting the claim the respondent inter alia raised the preliminary objections vis-à-vis estoppel, limitation, non joinder of necessary parties and that the respondents board had been exempted from the operation of the Standing Orders framed and notified by it under the Industrial Employment Standing Orders Act, 1946.

6. On merits it is averred by the respondents that the petitioner was initially engaged as a daily waged beldar w.e.f. 6.1.1998 and he remained engaged as such with interruption and breaks upto 30.1.2000 and on the completion of the work against which he was engaged his services were terminated by serving him a notice. On his request he was again reengaged on daily wages as a beldar w.e.f. 25.6.2001 and he worked as such with the respondent till 14.8.2001. Again on completion of work his services were terminated after serving him a notice. The petitioner had never completed 240 days of continuous service in any calendar year preceding his disengagement. As such his name was not included in the list of temporary workmen and his name was not reflected in the seniority list. The petitioner was deployed for specific period for carrying out work on a specific scheme.

7. As regards juniors it is averred by the respondent that their services were also terminated, but they had filed original applications before the Hon'ble Administrative Tribunal. They were reengaged in compliance to the orders passed in their favour by the said Tribunal. The respondents thus prayed for the dismissal of the claim.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. I notice that on 12.5.2009 the following issues had came to be framed by my ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . .OPP
2. Whether the petition is not maintainable. . .OPR
3. Whether the petitioner is estopped from filing the petition by his act and conduct. . .OPR
4. Whether the petition is barred by time. . .OPR
5. Whether the petition is bad for non-joinder of necessary parties and mis-joinder of parties. . .OPR
6. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No.2 : No
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No
Relief :Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

11. While contesting the claim of the petitioner it is averred by the respondents that he was engaged for the first time as a daily waged beldar by the respondents on 6.1.1998 and so is the deposition of the Assistant Engineer Electrical Sub Division, Ladbharol who has appeared as RW1. The petitioner has however placed on record the casual cards issued by the respondents themselves, showing the engagement of the petitioner from the year 1986 till 1991 as Ex. PW1/B to Ex. PW1/J. It thus falsifies the very plea of the respondents that the petitioner had been engaged for the first time on 6.1.1998. It is clear from the casual cards on record that the petitioner had been working with the respondent Board since 25.4.1986. Even the mandays placed on record by the respondent (Ex.RW1/A) shows that he was appointed on 6.1.1998. The mandays are also belied by the casual cards on record i.e. Ex. PW1/B to Ex. PW1/J. Atleast one thing is clear that the petitioner had been working with the respondents since the year 1986.

12. Even assuming that the petitioner had not completed 240 days in the preceding 12 months of his termination, as is the case of the respondents, it is however clear from record that the petitioner had been working with the respondents since the year 1996. The petitioner is stated to have been disengaged after the issuance of a retrenchment notice dated 4.8.2001 Ex. RW1/B. The said notice has been issued in accordance with the Certified Standing Orders 14 (2). Strangely the respondents themselves in their preliminary objections have averred that the Standing Orders framed and notified under the Industrial Employment Standing Orders Act, 1946 is not enforceable as HPSEB is exempted from the operation of the Act. If that is so the alleged retrenchment notice Ex. RW1/B is itself void in the eyes of law.

13. It is further the case of the respondent that the workman alleged to be juniors had also been terminated but they were reengaged in compliance of the orders of the Hon'ble Administrative Tribunal however no such order is on record. It is further the pleaded case of the respondents that since the petitioner had not completed 240 days of continuous service in any calendar year and as such his name was not included in the seniority list. I am afraid the said plea of the respondents is not sustainable as by now it is well settled that even the workmen who has not completed 240 days in a calendar year is entitled to the protection of the Section 25-G i.e. the principle of 'last come first go' and in this behalf a list has to be prepared by the employer to follow and abide by the requirements of Section 25-G. In this behalf support can ably be drawn by the judgment of Hon'ble Supreme Court titled as Central Bank of India vs. S. Satayam, (1996) (5) SCC 419). To this limited extent the termination of the petitioners is bad.

14. It is thus manifestly clear that the respondents had not resorted to the provisions of the Section 25-G of the Act. Certain juniors have been retained by the respondent board and the petitioner was shown the door. If nothing else the termination of the petitioner is against the mandate of Section 25-G of the Act. There is nothing on record to remotely suggest that the petitioner had been appointed against a specific scheme. Except the bald statement of RW1 Sh. S.K. Mahajan Assistant Engineer, Ladbharol, there is nothing on record to remotely suggest so. Though Ex. RW1/B in itself is void but even the said documents does not show against which scheme the petitioner had been engaged. Thus even the said plea of the respondent is not sustainable in the eyes of law.

15. For all the reasons discussed above it is held that the termination of the petitioner was in violation of the provisions of Section 25-G of the Act. The petitioner is thus entitled to reengagement. He is ordered to be reengaged forthwith. However seeing to the totality of the circumstances on record and more so the fact that the petitioner was having intermittent breaks in between he shall not be entitled to any back wages. Nonetheless the respondent shall grant continuity and seniority to the petitioner from the date of his termination.

16. The respondents have further raised a plea of abandonment. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent.

ISSUE 2

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE 3

18. The rule of estoppel is not attracted in this case. The Ld. counsel appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

ISSUE No. 4

19. From the perusal of the reference it transpires that the Labour Officer had referred the dispute to the appropriate Govt. in the year 2004. No doubt the period of 3 years had elapsed by then, but seeing to the mandate of the provisions of the Act and the law lay down by the Hon'ble Supreme Court and the Hon'ble High Courts it is clear that the aforesaid delay may not be fatal for the petitioners.

20. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

> "…….. While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years….."

21. Not only this our own Hon'ble High Court has further gone on to hold that the Labour Court cannot dismiss the claim on the ground of delay and latches once the same have been referred to this Court by the State Government. The Court can only take into consideration the delay at the time of granting the main relief. In a case titled as Naginder Kumar –vs-HPSEB (CWP No.885 of 2007 decided on 1-11-2007), it has been held thus.

ISSUE No. 5

22. The Ld. counsel appearing for the respondent has also not been able to show how the petition is bad for non-joinder and mis-joinder of the necessary parties. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

23. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. He is ordered to be reengaged forthwith along with seniority and continuity in service, though except back wags. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 20th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 166/2010
Date of Institution : 20.5.2010
Date of decision : 30.12.2010

Sh. Krishan Kant Sharma S/o Shri Om Prakash Sharma, R/o Village & P.O. Purani Mandi, Distt. Mandi, H.P. . .*Petitioner.*

Versus

1. The Managing Director, M/s Galaxy Hydal Energy Development Co. Ltd. Village & P.O. Bajaura, Distt. Kullu, H.P.
2. General Manager, M/s. Galaxy Hydal Energy Development Co. Ltd. Head Office, Village & P.O. Bajaura, Distt. Kullu, H.P. . .*Respondents*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent : Respondent already exparte.

AWARD

The following reference has been received from the appropriate Government for adjudication:

1. **"Whether termination of the services of Sh. Krishan Kant Sharma S/o Sh. Om Prakash Sharma by i) The Managing Director, M/s Galaxy Hydal Energy Development Co. Ltd. Village & P.O. Bajaura, Distt. Kullu, H.P. ii) General Manager, M/s. Galaxy Hydal Energy Development Co. Ltd. Head Office, Village & P.O. Bajaura, Distt. Kullu, H.P. w.e.f. 1.10.2006 without following the provisions of the Industrial Disputes Act, 1947? If not, what relief of service benefits including arrear of back wages, seniority and compensation the above workman is entitled to?"**

2. "Whether action of the above employer to take security amounting to Rs.50,000/- (Rs. Fifty Thousand Only) at the time of appointment of Sh. Krishan Kant Sharma S/o Sh. Om Prakash Sharma, is proper and justified? If not, what relief the aggrieved workman is entitled to"

3. "Whether Non-release of earned wages amounting to Rs.74,500/- (Rs. Seventy Four Thousand & Five Hundred only) by the above management is legal and unjustified? If unjustified, what relief along with earned wages, the above workman is entitled to?

2. In pursuance to the reference the petitioner has averred in the statement of claim that he was engaged on 1.9.2004 as a Supervisor/Fitter by the respondents. The petitioner has annexed the appointment letter along with. Further per the petitioner, an amount of Rs.50,000/- had been given by him as security to the respondents to secure his engagement.

3. The services of the petitioner however was terminated without any notice on 1.10.2006. The said action of the respondents is stated to be violative the provisions of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act).

4. It is further averred by the petitioner that his wages had been fixed @ Rs.3000/- per month which was later enhanced to Rs.4000/- after 5.4.2005 and to Rs.4500/- per month w.e.f. 6.9.2005. The respondent had paid/released only Rs.18000/- towards his wages for the entire period of his service and an amount of Rs.74500/- is still outstanding on account of wages.

5. The petitioner thus claims his reengagement along with the payment of Rs.50000/- which he had paid as security to the respondents and the balance of Rs.74500/- payable to him as wages along with all other consequential benefits.

6. The respondents had been served by way of affixation as the officials of the Company had refused to take service and hence they were set exparte vide an order dated 21.7.2010.

7. The petitioner while appearing as his own witness and reiterated the stand taken in the statement of claim and also placed on record his appointment letter dated 12.8.2004 vide Ex.PW1/B, his joining report Ex. PW1/C, a share slip vide Ex. PW1/D, Experience Certificate issued by the respondents vide Ex. PW1/E.

8. The oral and evidence led by the petitioner and the documents on record conclusively goes to show that the petitioner was appointed as a Supervisor in the respondent company and the petitioner had joined thereupon on 1st of September, 2004. The said fact is corroborated by the experience certificate issued by the General Manager of the respondent company. Apparently the said certificate has been issued after the disengagement of the petitioner. The petitioner thus continued working with the respondents right from the inception till the year 2006. Per him he has completed more than 240 days in the preceding 12 months of his termination and as such the non compliance of the statutory provisions of Section 25-F of the Act are fatal to the respondents. There is nothing on record to remotely suggest that the respondent company had resorted to the provisions of Section 25-F of the Act and as such it has to be inferred that the disengagement of the petitioner was against the mandatory provisions of Section 25-F of the Act. The termination of the petitioner thus was illegal. It is accordingly set aside. The respondent company is directed to reengage the petitioner forthwith in the same place and post, where he was working at the time of his disengagement. The petitioner has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness. There is nothing to the contrary proved by the respondents. He is thus held entitled to 50% back wages from the date of his illegal termination till his reengagement. The respondent shall also pay an amount of Rs.74500/- as outstanding wages payable to the petitioner. The amount of Rs.50000/- as claimed by the petitioner apparently has been handed over to the respondents as share capital. The petitioner shall be liberty to recover the said amount as per law. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 74/2006
Date of Institution : 16.5.2006
Date of decision : 4.12.2010

Shri Kulvinder Singh S/o Shri Preetpal Singh, R/o House No.216/3, Jail Roa Mandi, H.P. . .*Petitioner*

Versus

The Managing Partner, M/s. Cousins Gun Manufacturers Mandi, Distt. Mandi, H.P. . .*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. L.B. Sharma, Adv.
For the Respondent : None

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Kulvinder Singh S/o Shri Preetpal Singh workman by the M/s Cousins Gun Manufacturers Mandi, H.P. w.e.f. 20.5.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In pursuance to the reference, the petitioner has averred in the statement of claim that he was appointed as a Driver by the respondent in the year 1998 and he worked as such till 20.5.2004. All of sudden his services were terminated by the respondent orally without any notice. The petitioner had completed more than 240 days in each calendar year.

3. It is further averred by the petitioner that when he raised an industrial disputes before the Labour-cum Conciliation Officer the respondent had issued a notice and a cheque of Rs.2815/- which had not been accepted/ withdrawn by the petitioner.

4. The petitioner thus prays that he be ordered to be re□engaged forthwith in the same capacity as he was working earlier along with all consequential benefits including back wages.

5. The respondent was duly served but was proceeded exparte on 12.3.2007. The respondent had thereupon put in appearance and preferred an application under Order 9 Rule 7 CPC for setting the aside the exparte order. The earlier order was set aside. However no reply was filed thereafter and eventually on 17.9.2008 the respondent was again proceeded exparte. The respondent has chosen not to contest the proceeding for reasons best known to him.

6. The petitioner has averred that he worked with the respondent for six years uninterruptedly. He had completed more than 240 days in each calendar year. His services were terminated by the respondent on 20.5.2004 orally and without issuance of any notice, whatsoever. The petitioner has appeared as his own witness, PW1, and reiterated the averments made in the statement of claim. He has further examined one Manohar Lal as PW2. The said witness has further corroborated the version of the petitioner that he was working as a driver with the respondent from 1998 till the year 2004 when the services of the petitioner had been terminated.

7. The pleadings and the ocular evidence of the petitioner portraying the fact that the petitioner had completed more than 240 days in each calendar year and that his services were thereupon disengaged orally, without any notice has gone un□rebutted. The petitioner has discharged the initial onus cast upon him and nothing to the contrary has come on record. It is thus to be presumed and inferred that the petitioner had worked continuously and uninterruptedly with the respondent since the year 1998 and was terminated by the respondent without following the provisions of Section 25□F of the Industrial Disputes Act. The said termination thus was ipso facto illegal and liable to be quashed and set aside. It is ordered accordingly.

8. As a sequel thereto the discussion held hereinabove the petitioner is ordered to be reengaged forthwith at the same place and post in which the petitioner was working with the respondent at the time of his illegal termination.

9. The petitioner has failed to discharge the initial onus to proving that he was not gainfully employed during the period of his forced idleness. There is no whisper about the said fact in Ex. PW1/A. As such the petitioner shall not be liable to any back wages. Nonetheless the petitioner shall be entitled to continuity in service and seniority from the date of his illegal termination. The reference is disposed off in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 4th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 59/2007
Date of Institution : 2.6.2007
Date of decision : 29.11.2010

Kumari Sunita D/o Shri Sangat Ram, R/o Village & P.O. Dobhi, Tehsil & District Kullu, H.P. . .*Petitioner.*

Versus

1. The Managing Director, M/s. Lahoul Potato Growers Co-operative Marketing-cum-Processing Society Ltd. Manali, District Kullu, H.P.
2. The Registrar, Co-operative Societies, Government of H.P. Shimla, H.P. . .*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondents : Sh. R.L. Kaith, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether the action of the (1) Managing Director, M/s. Lahoul Potato Growers Co-operative Marketing-cum-Processing Society Ltd. Manali, District Kullu, H.P. (2) The Registrar, Cooperative Societies, Government of H.P. Shimla-9 to give break in service to Kumari Sunita D/o Shri Sangat Ram during her service period time and again and finally terminated w.e.f.18.9.1999 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. In furtherance to the reference, the case set out by the petitioner in brief is that he was engaged as a daily waged workman on muster roll basis on 20.6.1994.

3. The employer society was indulging in unfair labour practices and as a sequel thereto the daily wagers had formed a Union known by the name of L.P.S. Mazdoor Sangh. They had issued a demand notice on 2.6.1999, followed by a reminder on 13.7.1999. During the pendency of the said demand the services of the petitioner and other workmen, who were the members of the Union was illegally retrenched, though there was sufficient work available with the respondent.

4. The services of the petitioner was terminated on 18.9.1999 without any notice and compensation, oblivious of the fact that the petitioner had completed more than 240 days in each calendar year.

5. It is also averred by the petitioner that the employer had been giving fictional and illegal breaks to the petitioner without any fault on her part. The respondents even retained persons junior to the petitioner namely Santosh

Kumari, Maheshwar Singh, Vikash, Balbir, Ravinder Singh etc. The respondents had also engaged new hands but the petitioner was never offered any opportunity of reengagement.

6. The petitioner thus seeks that her oral termination on 18.9.1999 be set aside and quashed. He may be directed to be reengaged along with back wages and all other consequential benefits.

7. While contesting the claim the respondent No.2 has not filed any reply and nor contested the claim. The respondent society has however raised the preliminary objections that the society having being registered under the H.P. Cooperative Societies Act, 1968 the claim was without jurisdiction and that the petitioner having been appointed for a specified period the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) were not attracted in the present case.

8. On merits it is the case of the respondent society that the work with the society is of a seasonal nature. In order to meet the requirements of the society the workmen are engaged on seasonal basis or a specified period. These workmen are disengaged in accordance with law on the culmination of the potato season. It is further averred by the respondent that the services of the petitioner were not dispensed with a malafide intention or vindictive attitude. It was after the culmination of the potato season that the petitioner was eased out with an assurance that he would be reengaged during the next season. The petitioner was recalled in the next season but he did not join. The workmen were stated to have not been retrenched within the meaning of Section 2(oo).

9. The respondent further averred that the petitioner was always appointed for a specified period and not on regular basis. On culmination of the specified period the services of the petitioner stood automatically terminated and as such the compliance of the provisions of Section 25-F of the Industrial Disputes Act does not arise. The petitioner was engaged intermittently on seasonal basis or specified period of work. It is denied that the petitioner had completed 240 days during the preceding 12 months of her disengagement.

10. As per the respondents the petitioner had been offered due opportunity on opening of the potato season in the year 2000, for a period of 89 days, but, he did not report for duty. Consequently certain workmen namely Santosh Kumari, Maheshwar Singh, Vikash and Balbir had to be reengaged for 89 days. It is thus averred that the petitioner is not entitled to any relief claimed by her.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 6.1.2009 the following issues came to be framed by my ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent 1 is unlawful. If so, what relief of service benefits the petitioner is entitled to? . .OPP
2. Whether the respondent 1 had been giving fictional breaks in the services of the petitioner without any fault on her (petitioner) part. . .OPP
3. Whether the work of M/s. Lahaul Potato Grower's Cooperative Marketing-cum-Processing Society Ltd. Manali, Distt. Kullu, H.P. is of seasonal nature and the petitioner was engaged intermittently on the seasonal basis for a specific period. If so, to what effect. . .OPR
4. Whether the petitioner's removal from service does not fall within mischief of section 2(oo) of the Industrial Disputes Act, 1947. . .OPR
5. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : Yes
Issue No. 3 : No
Issue No. 4 : No
Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 2, 3 AND 4.

14. All the three issues being intermingled and co-related are taken up together for discussion.

15. Before considering the question of termination it would be apposite to first and foremost consider the question of the nature of the engagement i.e. whether the engagement was seasonal or intermittent in nature the breaks given thereupon were fictional or not.

16. The case set up by the petitioner simplicitor is that she was appointed for 89 days and thereupon given fictional breaks. was however again reemployed for 89 days and the process continued as such w.e.f. 20.6.1994 till 18.9.1999 when her services were eventually disengaged.

17. On the contrary the respondent has portrayed that the work available with them is seasonal in nature. The workman are engaged by the society on seasonal basis for a specified period i.e. during the potato season and thereafter the workmen are disengaged. The petitioner as such had been engaged intermittently on seasonal basis for specified period of 89 days in accordance with the exigency of work.

18. In order to substantiate the plea so raised by the petitioner she has appeared as her own witness, PW1. The petitioner has reiterated the stand taken by her in the statement of claim. She has also further placed on record the appointment letters issued to her for 89 days vide Exhibits PA-1 to PA-18.

19. On the other hand the respondents have examined the Managing Director Sh. Nawang Bodh as RW1 in order to substantiate their contention. The Managing Director of the society who has appeared as RW1 has deposed that during the potato season the society engages need based workmen for a specified period on daily wages every year. Likewise the petitioner had been engaged by the society and her services had come to an end on completion of the specified period of her employment. She was appointed on daily wages without asking for a requisition from the employment exchange. Since the petitioner had not completed 240 days during the preceding 12 months of her termination no notice was required to be served on her. Even assuming the petitioner had completed 240 days even then, she cannot claim reinstatement since the petitioner had been appointed dehors appointment rules i.e. without notifying the vacancy through the employment exchange. The respondent witness has also placed on record one office order dated 24.1.2007 and a resolution of the society dated 17.1.2007 whereby the allowances of the employees of the society have been ordered to be frozen.

20. Though the respondents have taken a categorically stand that the petitioner was appointed for seasonal work and that too during the potato season and that after the specified period the services of the petitioner had automatically come to an end. But it is also not denied by the respondent that the petitioner used to offer appointment for 89 days by issuing office orders. The petitioner has placed on record all the letters whereby she was offered appointment as is explicitly clear from the Exhibits PA-1 to Pa-18. A bare glance at the documents on record show that the petitioner had been offered appointment uninterruptedly from 1994 till her termination on 18.9.1999. The letters on record show that except for giving a break of a day or so the petitioner was invariably offered appointment for 89 days continuously. As per the appointment letters on record invariably after about 89 days the petitioner was offered appointment continuously from 20.6.1994 till 18.9.1999. The plea and testimony of the respondents that the petitioner had been engaged only for work in the potato season is thus falsified and belied by their own documents issued to the petitioner. Nothing to the contrary has been proved on record by the respondent. Rather, tacitly the respondent had admitted that the petitioner was appointed for 89 days by way of the appointment letters on record.

21. Not only the documentary evidence on record as discussed above clearly shows that the petitioner had completed more than 270 days in the 12 months preceding her termination. Thus, even otherwise it cannot be inferred that a person having worked for more than 270 days was a seasonal worker. It is thus clear that even the intention of the respondents themselves was not such as to engage the petitioner for a specified period, as alleged. Apparently it seems to be a ploy to defeat the rights of a workman as envisaged under the provisions of Industrial Disputes Act, more particularly the provisions of Section 25-F thereto. The aforesaid practice of the respondents to employ the petitioner uninterruptedly, but for 89 days each clearly falls within the ambit and scope of unfair labour practice and as such it cannot even be said that the petitioner's removal from service is protected under Section 2(oo) of the Industrial Disputes Act. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled Haryana State Electronics Development Ltd. vs. Mamni (AIR 2006 SC 2427).

22. Strangely the respondent society has raised a plea that since the engagement of the petitioner is dehors the appointment rules the subsequent disengagement was legal. Even if she has completed 240 days in the preceding 12 months it cannot claim reinstatement. The aforesaid plea in fact has not been raised in the reply filed by the society. It has been raised by the Managing Director who has appeared a RW1 while appearing as her own witness. However nothing has been produced on record to show as to what were and are the appointment rules governing the society. It is thus sought to be portrayed that since the petitioner was not engaged through employment exchange their initial engagement is bad in the eyes of law.

23. Though the ground was never taken by the respondents in their pleadings and as such the petitioner could not have been taken unaware that is without affording opportunity to the petitioner to explain the circumstances. But the fact remains that the respondents have even miserably failed to place on record the rules governing appointments in the society and as such the bald statement of RW1 cannot be believed that the appointment itself was dehors the rules. Even otherwise the appointment of the petitioner was on daily wage basis. It has been made after the concurrence of the board of directors though for 89 days. The initial engagement, thus, also cannot be said to be in violation of any rule as none but the board of directors had agreed to the appointment of the petitioner.

24. The ld. counsel for the respondents to buttress her contention that because of the illegal appointment of the petitioner the protection of the provisions of Section 25-F cannot be granted to the petitioner has placed reliance on a judgments of the Hon'ble Punjab and Haryana High Court titled as Chief Engineer, RSD, Irrigation Works and Anr. vs. Suresh Kumar (2009 (1) SCT 163) and Divisional Forest Officer vs. Mangat Ram & Anr. (2009 (1) SCT 62), a judgment of Hon'ble Supreme Court titled as Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh and Ors. (2007) 2 SCC (L&S) 441 and Accounts Officer (A&I) APSRTC and Ors. vs. K.V. Ramana & Ors. (2007 (3) SLR 440). Since the respondents have failed to prove that the appointment of the petitioner was against the recruitment rules of the respondents society the ratio laid by the Hon'ble Punjab and Haryana High Court in Suresh Kumar and Mangat Ram's case discussed hereinabove supra do not come to the rescue of the respondent.

25. The ratio of the K.V. Ramana and Dan Bahadur Singh's case also does not apply to the facts and circumstances of the present case as admittedly by now it is well settled that long working period cannot be regularized dehors the rules. The present case does not pertain to regularization, and in any case regularization if any has to be subject to the availability of post and policy thereupon in respect of regularization. Per se the petitioner cannot claim for regularization even after having put in long and uninterrupted service with the respondents. Nonetheless the aforesaid ratio does not apply to the facts and circumstances of the present case. For all the reasons discussed above it is to be held that the petitioner was not appointed for seasonal work and that too intermittently. The respondent in fact had been giving fictional breaks to the petitioner after every 89 days to frustrate the provisions of Section 25-F of the Act, though they continued employing the petitioner uninterruptedly from 20.6.1994 till 18.9.1999. In view of the matter it cannot further also said that the termination of the petitioner was protected by the provisions of Section 2(oo) of the Industrial Disputes Act. All the three issues are decided in favour of the petitioner and against the respondents.

ISSUE No. 1

26. Now reverting back to the core issue as to whether the termination of the petitioner by the respondent no.1 was unlawful or not, suffice it to say that for the reasons recorded in relation to the issues no.2,3 and 4, discussed hereinabove supra it is clear that the petitioner has completed more than 240 days in the preceding 12 months of her termination. The discussion held hereinabove points to only this conclusion. The documentary evidence on record more particularly Ex. PA-1 to Ex. PA-18 further falsifies the claim of the respondent and provides support to the case set up by the petitioner.

27. The case set up by the petitioner is further fortified by Ex. PA-19 and PA-21 whereby the petitioner and the other workmen had raised a demand charter before the respondents and which apparently led to the termination of the petitioner. The said fact is very candidly and categorically admitted by the Managing Director of the respondent society while appearing as RW1. In her cross-examination she has admitted that the petitioner and other workmen had formed a workers union and offended by the same their services have been dispensed with by the society. Even if that were so the respondent society was under a legal obligation to have atleast resorted to the provisions of Section 25-F of the Industrial Disputes Act and thereupon disengage the services of the petitioner. No such steps were taken by the respondent society. The petitioner having worked uninterruptedly from 20.6.1994 till 18.9.1999 and having completed more than 240 days immediately preceding 12 months of her termination was entitled to the protection of the Act. Not only this, the respondent has even otherwise flagrantly violating the provisions of the Industrial Disputes Act by offering appointment to the petitioner for 89 days and thereupon giving her fictional breaks to merely deprive her of her legal rights envisaged under the Industrial Disputes Act. It was nothing but an act of unfair labour practice. Apparently and as has been categorically admitted by the Managing Director the petitioner and the other workmen had been shown the door for having raised an union and a demand under the provisions of the Industrial Disputes Act. The termination of the petitioner thus cannot be sustained in any manner. Consequently the termination of the petitioner is held to be illegal. It is set aside and quashed. The respondent is directed to reengage the petitioner at the same place and post forthwith. The petitioner shall be entitled to continuity and seniority in service from the date of her illegal termination.

28. Though the petitioner has discharged her initial onus of proving that she was not gainfully employed during the period of her forced idleness but seeing to the financial health of the society, as is reflected per Ex. RW1/B and Ex. RW1/C it seems to be dismal. I do not think it just and proper to award back wages to the petitioner. Nonetheless seeing to the fact that the respondents had flagrantly violated the provisions of the Industrial Disputes Act and had been rather trying to defeat the provisions of the Act as has been discussed hereinabove it is ordered that the

respondent shall pay an amount of Rs.25,000/- to the petitioner as lump sum compensation in lieu of the back wages. The issue decided accordingly.

RELIEF

29. For all the foregoing reasons discussed the reference is allowed. The termination of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. She is entitled to continuity and seniority in service from the date of her illegal termination. The petitioner is also entitled to Rs.25,000/- as lump sum compensation in lieu of back wages. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 29th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 75/2006
Date of Institution : 16.5.2006
Date of decision : 6.12.2010

Smt. Kusam Lata W/o Late Shri Pritam Lal, R/o Village Sungal, P.O. Binolla, Tehsil Sadar, District Bilaspur, H.P. . .*Petitioner.*

Versus

Additional Superintending Engineer, HPSEB (Electrical Division), Bilaspur, District Bilaspur, H.P.
. .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondents : Sh. R.L. Sharma, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> **"Whether the demand raised by Smt. Kusam Lata W/o Late Sh. Pritam Lal through her demand notice dated 10.5.2003 (copy enclosed) from the Additional Superintending Engineer, HPSEB (Electrical) Division, Bilaspur, Distt. Bilaspur, H.P. for regularization the service of her husband late Sh. Pritam Lal who was entitled to be regularized after 1.4.2000 and she may be appointed as regular workman on the basis of compassionate grounds is proper and justified? If yes, what relief of service benefits and amount of compensation Smt. Kusam Lata W/o Late Shri Pritam Lal is entitled to?"**

2. In brief the case of the petitioner is that her husband late Shri Pritam Lal was working as a beldar with the respondent since 1.4.1992. He died in harness on 12.10.2001. His death occurred during the course of employment. She has one daughter who is four years old. The petitioner has been appointed on compassionate ground in the year 2004 and her services have been not regularized yet.

3. It is further averred by the petitioner that her husband late Sh. Pritam Lal was entitled to be regularized in the year 2001. He had raised an industrial dispute in this behalf in the year 2001 but unfortunately he died on 12.10.2001. Per the petitioner she is entitled to the seniority of her late husband. She thus seeks regularization w.e.f. 1.4.2000.

4. While contesting the claim the respondents have admitted that late Sh. Pritam Lal the husband of the petitioner was engaged as a beldar on daily waged basis on 1.2.1993. He had been working intermittently with the respondent till 15.1.1995. His services had been disengaged at that point of time. In the year 1997 he had raised an industrial dispute and in pursuance to an amicable settlement between the parties late Pritam Lal had been reengaged on 1.7.1997 without any back wages. Thereupon the deceased had worked till 11.10.2001 with the respondent. Before his death the petitioner had indeed raised a demand regarding his regularization but the said demand remained inconclusive thereafter.

5. It is further averred by the respondent that in view of the unfortunate demise of Sh. Pritam Lal the petitioner had been offered a post of a peon on compassionate grounds vide an office order dated 1.7.2004 and the petitioner had joined as such on the same date. Since then she is working in Electrical Sub Division HPSEB, Bilaspur without any protest and demur. The respondent thus prays for the dismissal of the reference.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 4.1.2008 the following issues had come to be framed by my ld. Predecessor.

1. Whether the demand raised by the petitioner is legal and justified? . .OPP
2. If the above issue is proved in affirmative to what relief of service benefit the petitioner is entitled to the respondent? . .OPP
3. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No
Issue No. 2 : No
Relief : Reference dismissed as per the operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2.

9. Both the issues are being taken up together for discussion as they are intermingled and co-related.

10. The petitioner seeks the benefit of regularization w.e.f. 1.4.2000 and that too in lieu of the services rendered by her late husband, before his demise. The petitioner's husband died in harness on 12.10.2001. Till that time admittedly his services had not been regularized, though he had raised an industrial dispute in this behalf. The petitioner had thereupon come to be appointed on compassionate grounds on 1.7.2004.

11. There is nothing on record to show whether the demand raised by the late husband of the petitioner resulted in failure and was thereupon sent for reference to this court or the petitioner took any steps to contest the dispute as raised by her husband.

12. The claim of the petitioner that she be regularized w.e.f. 1.4.2000 on the basis of the period put in by her late husband cannot be countenanced in any manner. At best the petitioner could have continued with the industrial dispute raised by her late husband and thereupon sought financial relief if any, which could have accrued in her favour. There is nothing on record to show that any steps were taken by the petitioner in this behalf. That was the only remedy open to the petitioner to claim any benefit which was or could have been made in respect of any right existing in favour of her late husband.

13. To claim seniority on the basis of the service put in by her late husband is not legally tenable in any manner. The petitioner has already been offered appointment on compassionate ground and she is working as a peon on daily wages since 1.7.2004. Any benefits in relation to the regularization of her husband could have been entertained on the basis of the industrial dispute so raised by the deceased. The same is not the case before this Court. In those circumstances also the petitioner at best could have been entitled to some financial benefits arising thereto as regularization per se was a right personal to the deceased. The petitioner could have been entitled to only some pecuniary benefits arising thereto.

14. For the aforesaid reasons it is thus held that the demand raised by the petitioner is not legally justified. Consequently the petitioner is not entitled to any benefit claimed vis-à-vis regularization. The issues are decided accordingly.

RELIEF

15. For all the reasons discussed hereinabove I see no merit in the reference and the same is accordingly dismissed. There shall be no orders as to costs. The reference is answered in the following terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 6th day of December, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 452/2009
Date of Institution : 28.8.2009
Date of decision : 26.11.2010

Shri Lakasheriya Ram S/o Shri Gunna Ram, R/o Vilalge Bhadiyar, P.O. Galu, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Shri Lakasheriya Ram S/o Shri Gunna Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex- Worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent in 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se

legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? . .OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? . .OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? . .OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? . .OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are taken up together for discussion as they are corelated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

> "25L (a) "*industrial establishment*" means-
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(m) "factory" means any premises including the precincts thereof-
>
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen.*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
>
> (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
> (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
> (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25□N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/B is ex-facie illegal.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

(a) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or

authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(b) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-(s) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed in 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Lal S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after his retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25 G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid

discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles his to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 805/2007-10006, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2009-Mandi dated August 17, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH
Presiding Judge,
H.P. Industrial tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 620/2008
Date of Institution : 29.10.2008

Date of decision : 26.11.2010

Smt. Maina Devi W/o Shri Jayoti Singh, R/o Village Banal, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. . .*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

"Whether retrenchment of services of Smt. Maina Devi W/o Shri Jayoti Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent on 1998 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of "First come, last go". The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H. The petitioner alleged that about 35 persons junior to her namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal etc. who were appointed in November, 1998 and even later thereto i.e. 1.1.2000 (Shashi Kant) 1.12.2003 (Ajay Kumar) and Roshani Devi appointed on 4.7.1999 have still being retained by the respondent.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits. The respondent with the malafide intentions in an illegal and arbitrary manner ordered the retrenchment of about 1636 daily waged workmen after exercising power wrongfully under Section 25-N of the Act.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by her act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following

the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect? . .OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect? . .OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect?. .OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? . .OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : Yes
Issue 3 : No
Issue 4 : No
Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25□N, under which the petitioner has been retrenched. It appears in Chapter *VB* of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter *VB* of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter *VB* defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-
(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment" within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

> "(a) "factory" means any premises including the precincts thereof-
> (b) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
> (c) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

> "25N. *Conditions precedent to retrenchment of workmen*— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
>
> (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
> (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
>
> (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
> (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
> (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management which has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as "malafide".

20. Now adverting to another interesting aspect which stares one at the face and ex facie seems to be against the cardinal and basic principle of law. The notification under Section 25 N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the "specified authority" from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law and the order dated 17.6.2005 passed by the Chief Engineer as specified authority, vide Ex.RW1/A-1 is ex-facie illegal.

21. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

> "25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

> "25B. *Definition of continuous service.* For the purposes of this Chapter,-
>
> (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
> (ii) two hundred and forty days, in any other case…."

23. The petitioner in paragraph 3 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. RW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1998. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

> "25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in

the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also reflected as so in the seniority list of one Shashi Kant S/o Shri Bihari Lal (Ex. PW1/B), who had been appointed as a beldar in January, 2000. The reply and the Ex. PW-1/B on record lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

26. The factum of Shashi Kant being junior to the petitioner has not only been testified by the petitioner but even the Executive Engineer, Dharampur Shri Naresh Kumar Sharma who while appearing as RW1 has sworn by the seniority list placed on record vide Ex. RW1/C. The name of Shashi Kumar S/o Shri Bihari Lal appears at serial no.646 and his date of engagement is reflected as 6.4.1999. Even if the said document is not given precedence over Ex. PW1/B wherein the seniority of Shashi Kant has been reckoned w.e.f. January, 2000, it is clear that the said Shashi Kant had been engaged after the petitioner. He was thus junior to the petitioner and having been retained as a beldar, the action of the respondent was indeed violative of the provisions of Section 25-G of the Act.

27. Though a vain attempt was made by the Ld. authorized representative for the petitioner to contend that since the respondent had engaged beldars even after her retrenchment, the action of the respondent is also a violative of the provisions of Section 25-H of the Act. No doubt as per seniority list for beldars as existing on 31.3.2008 (Ex.RW1/C) one Inder Singh, Mamta Devi and Ajay Kumar had been engaged on 1.1.2000, 6.4.2000 and 1.12.2003 respectively. But as is apparent from the record that all the three had been reengaged on compassionate ground. In these premises it may be difficult to hold that the action of the respondent was violative of the provisions of Section 25-H of the Act. However it would be apposite to refer that in other matters relating to the retrenchment based on the orders of the same specified authority evidence was led to prove that beldars had been engaged even in the year 2006. Since the said evidence is not a part of the record on this file, it may not be legal to record a finding on the basis of the same.

28. However, the infraction of the provisions of Section 25-G is in itself fatal to the respondents. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-G is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-G. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

29. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer, HPPWD, Dharampur vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

30. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

> "It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

31. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer

referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9242, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated August 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

32. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

33. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2010.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-cum-
Labour Court, Dharamshala.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित